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Sixty-sixth session

List of supplementary items proposed for inclusion in the agenda of the sixty-sixth session of the General Assembly*

1. Observer status for the Central European Initiative in the General Assembly [item proposed by Italy, Montenegro, Serbia and Ukraine (A/66/191)].
2. Observer status for United Cities and Local Governments in the General Assembly [item proposed by Turkey (A/66/192)].
3. Observer status for the Intergovernmental Authority on Development in the General Assembly [item proposed by Ethiopia (A/66/193)].
4. Financing of the United Nations Interim Security Force for Abyei [item proposed by the Secretary-General (A/66/194)].
5. Financing of the United Nations Mission in South Sudan [item proposed by the Secretary-General (A/66/195)].
6. Observer status for the Parliamentary Assembly of Turkic-speaking Countries in the General Assembly [item proposed by Azerbaijan (A/66/196)].
7. People's empowerment and a peace-centric development model [item proposed by Bangladesh (A/66/197)].
8. Observer status for the International Conference of Asian Political Parties in the General Assembly [item proposed by Cambodia, Japan, Nepal, the Philippines, the Republic of Korea and Viet Nam (A/66/198)].

* Issued in accordance with rule 14 of the rules of procedure of the General Assembly.

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United Nations A/66/200*

General Assembly

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24 August 2011

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Sixty-sixth session

List of supplementary items proposed for inclusion in the agenda of the sixty-sixth session of the General Assembly**

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* Reissued for technical reasons.

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United Nations A/66/201

General Assembly

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27 July 2011

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Sixty-sixth session
Item 82 of the provisional agenda*
Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Repertory of Practice of United Nations Organs and *Repertoire of the Practice of the Security Council*

Report of the Secretary-General

Summary

In conformity with General Assembly resolution 65/31, the present report outlines the progress made by the Secretariat since the last report (A/65/214) in updating the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*. The Assembly is invited to take action in the light of the conclusions drawn in paragraphs 14 and 27 of the present report.

* A/66/150.

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I. Introduction

1. The present report has been prepared pursuant to General Assembly resolution 65/31. In paragraph 9 of the resolution, the Assembly commended the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*. In paragraph 10, the Assembly noted with appreciation the contributions made by Member States to the trust fund for the updating of the *Repertoire*, as well as to the trust fund for the elimination of the backlog in the *Repertory*; and, in paragraph 11, the Assembly reiterated its call for voluntary contributions to those trust funds and the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications. In paragraph 12, the Assembly called upon the Secretary-General to continue his efforts towards updating the *Repertory* and the *Repertoire* and making them available electronically in all their respective language versions and to address, in particular, the backlog in the preparation of volume III of the *Repertory*. In paragraph 13, the Assembly reiterated the responsibility of the Secretary-General for the quality of the two publications and, with regard to the *Repertoire*, called upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of his report of 18 September 1952 (A/2170). Finally, in paragraph 14, the Assembly requested the Secretary-General to submit a report on both the *Repertory* and the *Repertoire* to the Assembly at its sixty-sixth session.

II. *Repertory of Practice of United Nations Organs*

A. Preparation of supplements to the *Repertory of Practice of United Nations Organs*

2. Since the last report (A/65/214), significant progress has been made in the preparation of studies pertaining to Supplements that were in the backlog. All the studies in respect of volumes II and VI of Supplements Nos. 7, 8 and 9 have been completed. These include studies on Article 17 for volume II of Supplements Nos. 7, 8 and 9; a study on Article 11 for volume II of Supplement No. 9; studies on Article 13 for volume II of Supplements Nos. 8 and 9; studies on Articles 97, 98 and 101 for volume VI of Supplements Nos. 8 and 9; and studies on Articles 99 and 103 for volume VI of Supplement No. 9. The Secretariat has submitted volume II of Supplements Nos. 7 and 8 and will shortly submit volume II of Supplement No. 9 and volume VI of Supplements Nos. 8 and 9 for translation and publication.

3. Bearing in mind the call made upon the Secretary-General, in paragraph 12 of General Assembly resolution 65/31, to address, in particular, the backlog concerning volume III of the *Repertory*, and following discussions (see para. 13 below) with the Codification Division of the Office of Legal Affairs acting as coordinator for this publication, the Security Council Affairs Division of the Department of Political Affairs prepared studies on Articles 23 (1), 25, 27, 29, 31, 32 and 33 (2), for inclusion in volume III of Supplements Nos. 7, 8 and 9 (1985-1999). These studies introduce and provide links to the relevant studies of the *Repertoire of the Practice*

of the Security Council. The links thus provided are intended to replace the elaboration of *Repertory* studies whenever there would be an overlap with the studies of the *Repertoire*. A single study for each of the above-mentioned provisions of the Charter addresses the entire period that is covered under the three Supplements.

4. Significant progress has also been achieved in the preparation of studies for Supplement No. 10 (2000-2009). During the reporting period, the following additional studies have been prepared with the assistance of interns or in collaboration with academic institutions:

(a) A study on Articles 1 (1), 1 (3), 1 (4), 2 (1), 2 (2), 2 (3) and 2 (5), as well as studies on Articles 1 (2), 2 (6), 4 and 7 for volume I;

(b) Studies on Articles 9, 10, 11, 12, 15, 20, 21 and 22 for volume II;

(c) Studies on Articles 55 (a) and (b) and 57 for volume IV;

(d) Studies on Articles 86, 89, 90 and 91 for volume V;

(e) Studies on Articles 96, 98 and 102 for volume VI.

5. The current status of the publication is as follows: 28 volumes have been published[1] and 8 volumes have been finalized and submitted for translation and publication.[2] Five completed volumes will soon be submitted for translation and publication.[3] Consequently, from among the 50 volumes of which the publication as a whole (original *Repertory* and supplements thereto) should consist, work remains to be completed on 9 volumes; 6 of those volumes pertain to Supplement No. 10, covering the most recent reviewable period, and are at different stages of preparation (see para. 4 above). The other three volumes on which work remains to be completed correspond to volume III of Supplements Nos. 7, 8 and 9.

6. Annex I to the present report sets out the responsibilities of individual Secretariat units for the preparation of *Repertory* studies on individual Articles of the Charter of the United Nations. Annex II provides information on the status of the *Repertory*.

B. Availability of *Repertory* studies on the Internet

7. Studies from 41 complete volumes, including the 13 volumes in processing for publication, are available on the United Nations website for the *Repertory* (www.un.org/law/repertory). Advance versions of several studies on individual Articles for volume III of Supplements Nos. 7, 8 and 9, as well as several studies for Supplement No. 10 which have been finalized and are awaiting completion of the respective volumes, continued to be accessible on the website. The electronic version of the *Repertory* includes a full-text search feature, providing the users with the opportunity to search all the studies instantaneously for any word or

[1] *Repertory* and Supplements Nos. 1 to 6 (1946-1984), for a total of 26 volumes, and volumes V and VI of Supplement No. 7 (1985-1988).

[2] Volumes I and IV of Supplement No. 7 (1985-1988); and volumes I, IV and V of Supplements Nos. 8 (1989-1994) and 9 (1995-1999).

[3] Volume II of Supplement No. 7; and volumes II and VI of Supplements Nos. 8 and 9.

combination of words in the three languages of the publication, namely English, French and Spanish.

8. Currently, all studies available in English are on the Internet, and most of them are also available on the Internet in French and Spanish. Finalized studies awaiting publication are placed on the Internet in the language in which they have been prepared (English for most of them, and French for some of them). The Secretariat will continue to make available electronically all three language versions of the finalized *Repertory* studies.

C. Cooperation with academic institutions

9. The well-established cooperation with Columbia University Law School continued for the eighth consecutive year. In total, eight students contributed to the preparation of nine studies relating to volumes I, II, IV and VI of Supplement No. 10.[4] The cooperation with the University of Ottawa, commenced during the preceding year, was successful: six studies pertaining to Supplement No. 10 were prepared by a team of advanced students from that University.[5] Furthermore, a study for volume VI of Supplement No. 9 was completed in collaboration with the University of Geneva.[6]

D. Trust fund

10. In its resolution 65/31, the General Assembly reiterated its call for voluntary contributions to the trust fund established pursuant to its resolution 59/44, in order to eliminate the backlog in the *Repertory*. Accordingly, a note verbale was sent to all permanent missions to the United Nations reminding them of the possibility of making voluntary contributions to the trust fund and inviting them to bring the question of funding for the *Repertory* to the attention of private institutions and individuals that might wish to assist in that regard. The Secretary-General welcomes with appreciation the contribution of $6,929 by Ireland to the trust fund.

11. The further use of consultants for the preparation of studies pertaining to volumes that are near completion is envisaged. Additional contributions to the trust fund are strongly encouraged so as to allow the Secretariat to carry out the effective elimination of the backlog in the *Repertory*.

E. Recommendations of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

12. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization considered the question of the *Repertory* and the *Repertoire* at its session held from 28 February to 4 March and on 7 and 9 March 2011. In its report (A/66/33, para. 63), the Special Committee

[4] Studies on Articles 4, 7, 22, 55 (a) (b) and (c), 56, 57, 63 and 96 of the Charter.

[5] A study on Articles 1 (1), 1 (3), 1 (4), 2 (1), 2 (2), 2 (3) and 2 (5), as well as studies on Articles 1 (2), 2 (6), 10, 11 and 12 of the Charter.

[6] Study on Article 103 of the Charter.

recommended, inter alia, with regard to the *Repertory*, that the General Assembly commend the Secretary-General for the progress made in the preparation of studies, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose; note with appreciation the contributions made by Member States to the trust fund for the elimination of the backlog in the *Repertory*; reiterate its call for voluntary contributions to the trust fund so as to further support the Secretariat in carrying out the effective elimination of that backlog, as well as the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the publication; call upon the Secretary-General to continue his efforts towards updating the publication and making it available electronically in all its language versions; express its serious concern that no progress has been made in reducing the backlog in the preparation of volume III of the *Repertory* and call upon the Secretary-General to address this issue effectively and on a priority basis; and reiterate the responsibility of the Secretary-General for the quality of the *Repertory*.

F. Interdepartmental Committee on Charter Repertory

13. In the implementation of the General Assembly mandate concerning the effective elimination of the backlog (resolution 65/31, para. 11), the Interdepartmental Committee on Charter Repertory, at its meeting on 17 February 2011, continued to explore possibilities of new approaches in the preparation of studies concerning volumes that are in the backlog. At a follow-up meeting of 11 March 2011 between the Codification Division acting as coordinator for the *Repertory* and the Security Council Affairs Division, it was agreed that the studies to be prepared for volume III of Supplements Nos. 7, 8 and 9 would be merged and that links would be provided therein to the relevant studies of the *Repertoire* (see para. 3 above). It was also agreed that all efforts should be made to eliminate the backlog in volume III, including through the use of interns and cooperation with academic institutions.

G. Conclusions

14. **With respect to the *Repertory of Practice of United Nations Organs*, in the light of the foregoing, the General Assembly may wish:**

(a) To note the current status of the publication, including the progress made in the preparation of *Repertory* studies and in their posting on the Internet in three languages (English, French and Spanish);

(b) To consider the recommendations of the Special Committee (see para. 12 above) concerning the increased use of the internship programme of the United Nations and the further expanded cooperation with academic institutions for the preparation of studies; voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory* so as to further support the Secretariat in carrying out the effective elimination of that backlog; the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the publication; the call upon the Secretary-General to continue his efforts towards updating the publication, and to continue to address effectively and on a priority basis the elimination of the

backlog in volume III of the *Repertory*; and the desirability of making it available electronically in all its language versions; and the reiteration of the Secretary-General's responsibility for the quality of the *Repertory*;

(c) To express appreciation for the contributions received to the trust fund for the elimination of the backlog in the *Repertory*; to note the progress made towards the elimination of that backlog through the utilization of the trust fund; and to strongly encourage States to make additional contributions to the trust fund.

III. *Repertoire of the Practice of the Security Council*

A. Mandate and preparation

15. The *Repertoire of the Practice of the Security Council*, originally mandated by the General Assembly in its resolution 686 (VII) of 5 December 1952, continues to provide a record of the evolving practice and procedure of the Security Council in the framework of the Charter of the United Nations and the Council's provisional rules of procedure. Most recently, by its resolution 65/31, the General Assembly called upon the Secretary-General to continue his efforts towards updating the *Repertoire* and making it available electronically in all its respective language versions.

16. Pursuant to the mandate provided by the General Assembly, the Secretariat has made much progress in the preparation of supplements to the *Repertoire* since the last report (A/65/214). In line with the "two-track" approach that allows the simultaneous preparation of two or more supplements, in the past year the Secretariat worked on the fifteenth and sixteenth Supplements to the *Repertoire*, covering the period 2004 to 2007 and the years 2008 and 2009, respectively, within the context of the modalities outlined in paragraphs 102 to 106 of the report of the Secretary-General of 18 September 1952 (A/2170).

17. The completion of the fourteenth Supplement (2000-2003) allowed the Secretariat to focus all of its efforts on the contemporary practice of the Security Council from 2004 onwards. The entire fifteenth Supplement (2004-2007) has been completed and made available electronically on the *Repertoire* website in the advance version.

18. Much progress has also been made in the past year in the preparation of the sixteenth Supplement, covering a shorter two-year period (2008 and 2009). Work on all parts is in progress and it is expected to be completed by the end of 2011. Studies for the part which provides a chronological record of the Security Council's consideration of items on its agenda have already been made available electronically on the *Repertoire* website in an advance version.

19. In view of the progress made towards the completion of the sixteenth Supplement, the Secretariat has initiated work on the seventeenth Supplement, covering 2010 and 2011. The groundwork for preparation of that Supplement was systematically laid down over the past year, through the tracking and recording of the contemporary practice of the Security Council in internal databases. However, progress on that Supplement will depend on the staffing situation in the Security Council Practices and Charter Research Branch of the Security Council Affairs

Division and the continuing availability of resources, which is considered further in paragraph 26 below.

20. Meanwhile, within the limits of the resources available to it, the Secretariat has continued its efforts at producing the *Repertoire* in the most expeditious manner consistent with accuracy and balance by resorting to several efficiency-enhancing initiatives. Such initiatives include specialized training of staff; creation of improved information and knowledge-sharing mechanisms; streamlining of individual parts of the *Repertoire* to reduce redundancies and overlaps; enhancement of databases, including new modules on Security Council decisions and mandates, to record and retrieve the mounting body of past and current practice and procedures of the Security Council as well as to generate tables and text; and updating of internal guidelines and templates to capture staff expertise and ensure consistency in the preparation of the *Repertoire*.

21. The simultaneous preparation of several voluminous supplements to the *Repertoire* has not been without challenges. Although the Secretariat has managed to achieve, through various initiatives, progress towards updating the *Repertoire* and providing Member States with more up-to-date information on current Security Council practice, it has faced additional challenges in terms of editing, translating, indexing and publishing the supplements. The Secretariat is continuing to explore various options to address the existing resource constraints and consequent delays in publishing the supplements. In the interim, one of the options it has relied upon has been the posting of completed supplements and individual chapters of supplements under preparation in an advance version on the *Repertoire* website.

B. Advance publication: availability of *Repertoire* studies on the Internet

22. To ensure that finalized chapters can be fully utilized, since December 2010 the Secretariat has completely overhauled the *Repertoire* website, further enhancing its search capabilities and providing a user-friendly interface that allows for quicker access to the wealth of information on the practices of the Security Council set out in the *Repertoire*. Depending on the availability of funds the Secretariat will similarly seek to have the website translated into the remaining official languages.

23. To allow access to information as quickly as possible, the Secretariat has posted on its website finalized chapters of the *Repertoire* in an advance version (see annex III to the present report). In addition to the published supplements, all chapters of the still unpublished thirteenth to fifteenth Supplements (1996 to 2007) have been posted in an advance version.

24. In addition to the preparation of the *Repertoire*, the Secretariat, upon request, provides information on questions relating to both the current and past practice of the Security Council and its subsidiary organs. During the reporting period it responded, in a timely and accurate fashion, to communications and requests for information from Member States as well as from officials of the United Nations system and staff of other international organizations, non-governmental organizations, students, academic scholars and researchers and the private sector which reached the Secretariat directly and through the *Repertoire* website. Given the volume of queries received online, the Secretariat set up a special e-mail account to

process such queries and encourages Member States to address queries to the account: dpa-repertoire@un.org.

C. Publication in language versions (print and electronic)

25. In compliance with General Assembly resolution 55/222, in which the Assembly requested the Secretary-General to publish the future supplements to the *Repertoire* in all six official languages, the tenth and eleventh Supplements have been published in all official languages. The twelfth (1993-1995), thirteenth (1996-1999) and fourteenth (2000-2003) Supplements have been submitted for translation and publication into all official languages and subsequent volumes will be submitted as soon as they are completed and edited. The Secretariat will also continue to make every effort to place the latest volumes of the *Repertoire* online in the six official languages as soon as they are available.

D. Resources

26. The preparation and publication of the *Repertoire* as well as the redesign of its website would not have been possible without the continued support of the General Assembly. At the same time, in an environment of financial constraint, voluntary contributions to the trust fund for the updating of the *Repertoire* remain an important element for sustaining progress on the *Repertoire* and maintaining the website in all six official languages. The infusion of extrabudgetary resources has enabled the Secretariat to retain the services of temporary staff assisting in the preparation of the *Repertoire* and to work simultaneously on several volumes of the publication. Since the last report (A/65/214), a contribution to the trust fund has been received from Mexico. In addition, Germany has continued to contribute by sponsoring an associate expert in the Security Council Practices and Charter Research Branch, who has been making a valuable contribution to advancing the work on the *Repertoire* and thus helping the Secretariat to achieve its goal of bringing the publication up to date. As this goal remains to be met fully, the Secretariat encourages Member States to continue to support the Secretariat's work on advancing the *Repertoire* through their voluntary contributions to the trust fund.

E. Conclusions

27. **With respect to the *Repertoire of the Practice of the Security Council*, in the light of the foregoing and the recommendations made by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization at its session held from 28 February to 4 March and on 7 and 9 March 2011, the General Assembly may wish:**

(a) **To note the progress made towards the updating of the *Repertoire*, including through the utilization of the trust fund for the updating of the *Repertoire*;**

(b) **To note the implementation of efficiency-enhancing measures to expedite the simultaneous preparation of supplements to the *Repertoire*;**

(c) To note the continued posting of the *Repertoire* in electronic form in all language versions on the United Nations website;

(d) To note the enhancement of the *Repertoire* website and the easy access it provides to the wealth of information on the practice of the Security Council;

(e) To express appreciation for the contributions to the trust fund for the updating of the *Repertoire* and to reiterate its call for voluntary contributions to the trust fund for the updating of the *Repertoire*;

(f) To note with appreciation the support which Germany has extended by sponsoring, on a voluntary basis, an associate expert to assist in the preparation of the *Repertoire*, and to encourage other Member States in a position to do so to consider providing such assistance.

Annex I

Secretariat units bearing primary responsibility for the preparation of *Repertory* studies on individual Articles of the Charter of the United Nations[a]

Department	*Repertory volume*
Office of Legal Affairs	Volume I: Articles 1 to 7
	Volume II: Articles 13 (l) (a), 18, 19 and 22
	Volume VI: Articles 92 to 99, 102 to 105 and 108 to 111
Department of Political Affairs	Volume II: Articles 10, 12, 13 (1) (a), 14 and 16
	Volume III: Articles 23 to 39 and 107
	Volume V: Articles 73 to 85, 87 and 88
Department of Peacekeeping Operations	Volume III: Articles 40 to 54 and 106
Office for Disarmament Affairs	Volume II: Article 11
Department for General Assembly and Conference Management	Volume II: Articles 9, 15, 20 and 21
	Volume IV: Articles 60, 61, 62 (3) and (4), 65 to 69 and 72
	Volume V: Articles 86 and 89 to 91
Department of Management	Volume II: Article 17
	Volume VI: Articles 100 (1) and 101
Department of Management with Office of Legal Affairs	Volume VI: Article 100 (2)
Department of Economic and Social Affairs	Volume II: Articles 8[b] and 13 (1) (b) and (2)
	Volume IV: Articles 55 (a) and (b), 57 to 59, 62 (1), 63, 64, 70 and 71
Office of the United Nations High Commissioner for Human Rights	Volume II: Article 13 (1) (b)
	Volume IV: Articles 55 (c), 56 and 62 (2)
Office for Outer Space Affairs	Volume II: Article 13 (1) (a)

[a] This distribution is the result of several decisions of the Interdepartmental Committee on Charter Repertory taken at various times since 1996 and is subject to review by the Committee.

[b] The Department of Management (Office of Human Resources Management) is responsible for the preparation of Article 8 for the period up to and including 1996. For the period from 1997 onward, that responsibility falls to the Department of Economic and Social Affairs.

Annex II

Status of the *Repertory of Practice of United Nations Organs* (July 2011)

Volumes published and on the Internet	Studies submitted for publication	Studies on the Internet (pertaining to volumes not submitted for publication)	Studies in preparation or in review

Note: The organization of studies in volumes, as indicated below, relates to Supplements Nos. 6 to 10, and varies for the original *Repertory* and Supplements Nos. 1 to 5.

Volumes, Articles	*Original Repertory*	*Supplements*									
		1	*2*	*3*	*4*	*5*	*6 1979-1984*	*7 1985-1988*	*8 1989-1994*	*9 1995-1999*	*10 2000-2009*
Volume I							I	I	I	I	I
Articles 1, 2, 4 and 7											
Articles 3, 5, 6 and 8											
Volume II							II	II	II	II	II
Articles 9-12, 15, 20, 21 and 22											
Article 13 (1a, second phrase)											
Articles 13 (1a, first phrase, 1b, 2), 14, 16, 17, 18 and 19											
Volume III							III	III	III	III	III
Articles 23 (1) and (3), 25, 27, 29 and 31-33 (2)											
Articles 23 (2), 24, 26, 28 and 30 Article 33 (1)-39											
Articles 40-51 Articles 52-54											
Volume IV							IV	IV	IV	IV	IV
Articles 55 (a) and (b), 57 and 62 (2)											
Articles 55 (c), 56 and 63											
Articles 58-61, 62 (1, 3, 4) and 64-72											
Volume V							V	V	V	V	V
Articles 86 and 89-91											
Articles 73-85, 87 and 88											
Volume VI							VI	VI	VI	VI	VI
Articles 96, 98 (treaties) and 102											

Volumes, Articles	*Original Repertory*	*Supplements*									
		1	*2*	*3*	*4*	*5*	*6 1979-1984*	*7 1985-1988*	*8 1989-1994*	*9 1995-1999*	*10 2000-2009*
Articles 110 and 111											
Articles 98 (general), 92-95, 97, 99, 100, 101 and 103-109											

Studies prepared from 1954 to 1980

Studies prepared from 1996 to 2011

Annex III

Status of the *Repertoire of the Practice of the Security Council* (July 2011)

Supplements published and posted on the Internet at www.un.org/en/sc/repertoire	Final version posted on the Internet	Advance version available on the Internet	Parts in preparation	Preliminary research in progress

A. Status of the completed *Repertoire* Supplements

Repertoire	*Status*	*Languages*
Original *Repertoire* and Supplements I-IX (1946-1984)		English, French
Supplements X and XI (1985-1992)		Arabic, Chinese, English, French, Russian, Spanish[a]
Supplement XII (1993-1995)		English, translation into other languages in progress
Supplement XIII (1996-1999)		English, translation into other languages in progress
Supplement XIV (2000-2003)		English
Supplement XV (2004-2007)		English

B. Status of *Repertoire* Supplements in preparation

	Parts (procedural and constitutional)									
	I Overview	*II Provisional rules of procedure*	*III Purposes and principles of the Charter*	*IV Relations with other United Nations organs*	*V Functions and powers of the Security Council*	*VI Pacific settlement of disputes*	*VII Actions with respect to breaches of the peace*	*VIII Regional arrangements*	*IX Subsidiary organs: committees/ other bodies*	*X Subsidiary organs: peacekeeping and peacebuilding*
Supplement XVI (2008-2009)										
Supplement XVII (2010-2011)										

[a] As mandated by the General Assembly in resolution 55/222, this Supplement and future Supplements to the *Repertoire* are to be published in all official languages of the United Nations.

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General Assembly

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Sixty-sixth session
Item 63 (a) of the provisional agenda*
New Partnership for Africa's Development: progress in implementation and international support

New Partnership for Africa's Development: ninth consolidated progress report on implementation and international support

Report of the Secretary-General

Summary

The present report, mandated by General Assembly resolution A/65/284, coincides with the tenth anniversary of the adoption by African leaders of the flagship programme of the African Union, the New Partnership for Africa's Development (NEPAD). The report assesses progress achieved in implementing NEPAD projects and programmes and the support provided by the international community. It also coincides with renewed attention being paid to Africa's development needs, as evidenced by the significant commitments made following the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals in 2010, the adoption of both the Istanbul Programme of Action at the Fourth United Nations Conference on the Least Developed Countries and the implementation framework for the recommendations of the Millennium Development Goals Africa Steering Group to accelerate progress towards achieving the Millennium Development Goals in Africa. This renewed attention reflects the fact that African countries still face challenges in achieving the Millennium Development Goals.

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In this context, while highlighting the fact that African countries have made progress in implementing NEPAD, the report reiterates the need for allocation of more resources to NEPAD sectoral priorities and for appropriate reforms to further encourage the private sector in partnership projects and promote public-private partnerships for the financing of infrastructure projects. To further strengthen international cooperation for development and facilitate the implementation of NEPAD, development partners should take urgent steps to successfully conclude the Doha Round of trade negotiations with its development dimension, deliver on aid commitments and improve aid effectiveness. Ten years after the adoption of NEPAD, the option of "business as usual" should not be an alternative as it would lead to broken promises and further delay the achievement of the Millennium Development Goals and the implementation of NEPAD.

Contents

		Page
I.	Introduction	4
II.	Action taken by African countries and organizations	4
	A. Infrastructure	4
	B. Agriculture and food security	6
	C. Health	7
	D. Education and training	8
	E. Environment and tourism	8
	F. Information and communications technology	10
	G. Science and technology	11
	H. Gender mainstreaming, empowerment of women and civil society participation	11
	I. African Peer Review Mechanism	12
III.	Response of the international community: building on the momentum of international support for Africa's development	13
	A. Official development assistance	14
	B. Debt relief	16
	C. Foreign direct investment	17
	D. Trade	18
	E. South-South cooperation	19
	F. Millennium Villages	19
IV.	Support provided by the United Nations system	20
	Strengthening of the Regional Coordination Mechanism of United Nations agencies and organizations working in Africa in support of the African Union and its NEPAD programme and the cluster system	20
V.	Conclusions and recommendations	21

I. Introduction

1. In its resolution 65/284, entitled "New Partnership for Africa's Development: progress in implementation and international support", the General Assembly requested the Secretary-General to submit a comprehensive report on the implementation of the resolution to the Assembly at its sixty-sixth session. The present report responds to that request.

2. The report highlights the policy measures taken by African countries and organizations in the implementation of the New Partnership for Africa's Development (NEPAD), the response of the international community and support provided by the United Nations system during the past year. The activities undertaken by the private sector and civil society in support of NEPAD are also highlighted. The report has benefited from information provided by Member States, the African Union Commission, the African Development Bank (AfDB), the NEPAD Planning and Coordinating Agency (NEPAD Agency), the African Peer Review Mechanism secretariat, the Organization for Economic Cooperation and Development (OECD) and a number of entities of the United Nations system.

II. Action taken by African countries and organizations

3. NEPAD, which was adopted in July 2001 in Lusaka by African leaders, is both a collective vision and a strategic development framework for Africa. Its main objective is to generate broad-based and equitable economic growth that allows Africa to reduce poverty and better integrate into the global economy. Translating this vision into action requires implementation of the key sectoral priorities of NEPAD. To a large extent, the move from a framework to an operational blueprint depends on the resolve of each country. Within the NEPAD context, each country is expected to design its own national blueprint consistent with NEPAD goals and assume responsibility for implementing NEPAD programmes at the national level. In addition, the regional economic communities, which are the core institutions for Africa's economic integration, play a leading role in implementing projects at the subregional level.

A. Infrastructure

4. Efforts in the past 12 months in this sector have focused on power, transport and water. The establishment of the NEPAD Agency and its integration into the structures and processes of the African Union has led to strengthened coherence and coordination of development efforts. For example, the NEPAD Agency and the African Union Commission Infrastructure and Energy Department have developed a joint work programme, and adopted a joint priority infrastructure project for 2010-2015, drawn from the African Union/NEPAD African Action Plan. The main objective of the Programme for Infrastructure Development in Africa, which was endorsed at the fourteenth African Union Summit in February 2010, is to develop a vision for Africa's infrastructure development based on the continent's strategic objectives and sector policies. It provides a coherent framework for regional and continental infrastructure development (transport, energy, water and information and communications technology).

5. Following the successful implementation of the short-term action plan, the NEPAD Agency, in collaboration with AfDB, launched a third review of the action plan. According to the review, the action plan contributed to the development of regional infrastructure with an estimated investment of $5.6 billion between 2002 and 2008, accounting for 69 per cent of the original short-term action plan investment envelope. Since 2004, of the 103 projects that have been reviewed, 70 per cent have achieved some progress and 15 per cent have reached project completion point.

6. In an effort to streamline its activities and ensure effective coordination and collaboration in programme and project implementation, the NEPAD Agency concluded a memorandum of understanding with the African Forum for Utility Regulators in March 2010. The Forum is an initiative established by the NEPAD founding document with the aim of establishing and fostering cooperation among utility regulators on the African continent in support of Africa's growth and socio-economic development. Its primary focus pertains to the regulation of infrastructure (communications, energy, transport, water and sanitation). Cooperation between the Forum and the Agency is aimed at building and strengthening existing partnership arrangements in relation to infrastructure development in Africa.

7. In the air transport sector, efforts have also continued to promote the safety and efficiency of air travel on the continent through the full implementation of the Yamoussoukro Declaration on a new African civil aviation policy. The NEPAD Agency and the African Civil Aviation Commission have also agreed on a memorandum of understanding to be signed this year, whereby the Agency will support the Commission in the mobilization of resources for the development of civil aviation in Africa and in undertaking its new role as the executing agency for the Yamoussoukro Declaration.

8. The NEPAD Agency continues to play an active role in the implementation of the Africa-Republic of Korea infrastructure project, an initiative of the Korea Institute for Development Strategy. Accordingly, the Agency supported the visit of an 18-member team of experts to Angola, the Democratic Republic of the Congo, Mozambique, Namibia, South Africa, the United Republic of Tanzania and Zambia, seeking pipeline investment projects in transportation and energy. The Agency is also following up on the outcome of the Republic of Korea-Africa investment conference on infrastructure and energy development held in Seoul in December 2009. Infrastructure projects from Angola, the Democratic Republic of the Congo, Namibia, South Africa, the United Republic of Tanzania and Zambia are being promoted to investors from the Republic of Korea.

9. In the area of regional integration and infrastructure, the NEPAD Agency has been facilitating the implementation of seven regional projects within the framework of the African Union-NEPAD Presidential Infrastructure Champion Initiative, as endorsed at the sixteenth session of the Assembly of the African Union.

10. In the water and sanitation sector, efforts have been focused on building and strengthening capacity in programme development and implementation through leveraging partnerships. In this regard, the NEPAD Agency and WaterAid (a water and sanitation non-governmental organization based in the United Kingdom of Great Britain and Northern Ireland) have agreed that WaterAid will provide short-term consultants to the Agency to develop and implement its programmes and in

return the Agency will consider hosting the WaterAid programme of activities for Southern Africa within its infrastructure unit. The two sides further agreed to work together in undertaking regional and continental water and sanitation programmes and projects.

B. Agriculture and food security

11. Agriculture is the mainstay of many African economies and thus crucial to Africa's long-term socio-economic growth and sustainable development. Progress on the implementation of commitments under the Comprehensive Africa Agriculture Development Programme (CAADP) at both country and regional levels continued during the period under review with an increasing number of countries designing programmes to deliver on the 6 per cent agricultural productivity target. Of the 26 countries that have signed their national CAADP compacts, 20 have prepared or finalized their national investment plans and presented them to an independent technical review organized by the Agency, and are now working on financing and implementation modalities.

12. Progress has been most notable in meeting the target of 10 per cent of the budget invested in agriculture as set out in the Maputo Declaration. Ten countries have now met the target, compared to only five countries in 2009, and nine countries have invested between 5 and 10 per cent of the budget.

13. There has also been noticeable progress on the implementation of regional CAADP compacts. The Commission of the Economic Community of West African States (ECOWAS), the only regional economic commission to sign a regional CAADP compact, has allocated $150 million from its own resources to finance a five-year plan. This represents 16 per cent of the overall cost of the regional plan. Similarly, development partners have also responded positively, with Spain allocating €240 million over three years, of which two thirds have already been disbursed through the World Bank.

14. The implementation of CAADP has brought additional benefits to beneficiary countries. Firstly, countries are embracing and providing for evidence-based analysis and planning and reviewing strategies and programmes, which is translating into the development of quality investment programmes. Secondly, countries are getting better access to locally acceptable tools and mechanisms, allowing for greater inclusiveness, more public and inclusive review of development policies and government openness to engage non-State actors as equal partners. Thirdly, it has led to an improved engagement with development partners and fourthly, it has greatly helped in providing framework and national priorities around which to harmonize and coordinate development aid support.

15. At the regional level, progress has been made in the implementation of the West Africa fisheries policy pilot project, involving Ghana and Sierra Leone. The project is supporting major World Bank investments in the fisheries sectors in Ghana and Sierra Leone. These countries are beneficiaries of two related International Development Association (IDA) investments totalling $90 to $100 million. An additional $57.8 million has been allocated to Ghana and Guinea-Bissau by the World Bank ($52 million), the Global Environmental Facility ($4 million) and the Partnership for African Fisheries ($1.8 million) as part of the first phase of the West African Regional Fisheries Programme.

16. These investments are strategic for NEPAD and the Partnership for African Fisheries in three ways: (a) NEPAD takes the lead in defining the policy, regulatory and management framework within which fisheries investments should take place; (b) they support the alignment of fisheries within the CAADP framework, i.e. to ensure that fisheries contribute more effectively and sustainably to the 6 per cent annual growth target and to food security; and (c) this constitutes the critical post-CAADP compact response to support countries which have completed their CAADP compact for formulating investment programmes in fisheries.

17. The implementation of the Partnership for African Fisheries has been important for the beneficiary countries in several respects: (a) its inputs have been critical in leveraging the financial investment of the World Bank and reducing the time it takes to complete the programme development cycle from 18 to 6 months; and (b) its active and important role in mobilizing local expertise for the formulation of the investment programme has enhanced the local ownership of the programmes.

C. Health

18. The NEPAD Agency has continued to pursue the key NEPAD objectives of improving health-care systems in Africa, increasing the number of trained health workers, and ensuring the availability of affordable, safe and effective medicine for all Africans. To achieve the latter goal, NEPAD is leading the African Medicines Regulatory Harmonization Initiative, which mobilizes financial and technical resources, advocates for policy and legislative reviews of the regulation of medicines, and coordinates existing capacity-building initiatives for regulation, with the aim of increasing harmonization of the regulation of medicines. NEPAD coordinates a consortium consisting of the World Health Organization (WHO), the Bill and Melinda Gates Foundation, the Clinton Foundation and the Department for International Development of the United Kingdom in implementing the Initiative and has so far received six project proposals from regional economic commissions for achieving harmonization at the regional level. The NEPAD Agency, in consultation with the regional economic commissions, has finalized the situation analysis of the regulation and harmonization of medicines in the East African Community (EAC), Southern African Development Community (SADC) and ECOWAS regions and will disseminate lessons learned from the review process to African countries and the commissions.

19. Through the Initiative, the NEPAD Agency is working with stakeholders and partners to address the poor regulation of African pharmaceutical markets as a main component of promotion and protection of public health, since it contributes to ensuring that patients access high-quality, safe and effective medicines. As such, the Agency is collaborating with the Pan-African Parliament Committee on Health, Labour and Social Affairs to raise awareness of and advocate for the Initiative on the continent. Furthermore, the implementation framework for the Initiative was endorsed by the African Union Conference of Ministers of Health in April 2011 in Namibia.

20. The NEPAD Agency has continued to play a key role in addressing the health workforce crisis in Africa. In this context, the African Platform on Human Resources for Health, chaired by the Agency, completed a needs assessment study of

sub-Saharan African medical schools to provide a strong knowledge base for future action. The findings of the study will guide the collaboration between WHO and the United States President's Emergency Plan for AIDS Relief in their efforts to scale up the transformative education of doctors and nurses, in line with the commitment of the Emergency Plan to support the training of more than 100,000 new health professionals in Africa.

21. Progress is being made in working with Research for Health Africa to achieve health and equity, reduce poverty and contribute to the socio-economic development of African countries. To date, Mozambique, Senegal and the United Republic of Tanzania have chosen to participate in the Research for Health Africa initiative. Senegal and the United Republic of Tanzania have agreed to use the initiative and its web portal to manage their national research into health information systems. The NEPAD Agency is also designing a programme to provide technical support to the regional economic commissions to develop comprehensive sanitary and phytosanitary policy frameworks, as well as strategies for staple crops. In particular, it will address issues of regional market integration.

D. Education and training

22. The NEPAD Agency has continued to promote human resource development for nurses and midwives in Africa, through negotiations with the Government of the United Republic of Tanzania for deployment of graduate nurses and midwives in rural communities, using mobile clinics. The Agency has also developed a programme which aims to upgrade the education and qualifications of nurses and midwives in three countries within the Economic Community of Central African States (ECCAS). In Southern Africa, a group of six universities with established clinical master's degrees in nursing and midwifery has formed a consortium, which will cooperate to develop and offer both undergraduate and master's degree programmes in nursing and midwifery in three host universities in the ECCAS region. At the same time they will assist regulatory bodies in the three countries and work with the Ministries of Health to develop career plans which make provision for the recognition, utilization and reward of such nurses and midwives in the public sector. In addition, the NEPAD Agency has prioritized forestry education, with submissions made to the Government of Sweden to provide funding for a workshop to finalize the programme for postgraduate studies in forestry education.

23. The project to establish a regional centre for mathematics, science and technology education is being pursued through redoubled efforts to engage the Governments of Gabon and South Africa to support the launch of the centre in Gabon. Three countries (Angola, the Democratic Republic of the Congo and Mozambique) have submitted proposals for funding teacher development through open and distance learning to the African Renaissance and International Cooperation Fund in South Africa.

E. Environment and tourism

24. Seven years after the adoption of the NEPAD Action Plan for the Environment, progress has been recorded in the development of subregional environment action plans for the regions and countries represented by ECCAS, ECOWAS, the

Intergovernmental Authority on Development, SADC, and the Arab Maghreb Union. This has enabled national action plans to be developed in five countries. Furthermore, capacity has been built in the implementation of the Action Plan for the Environment at national and subregional levels. The Plan has also provided support to African countries in enhancing implementation of the United Nations Framework Convention on Climate Change and the Kyoto Protocol. Similar support has been provided in the execution of the biodiversity and desertification aspects of the national action plans. In this regard, policy goals have been set and a framework developed to guide discussions on issues such as access and benefit sharing, sustainable forest management, alien invasive species, and integrated marine and coastal management. The Plan has also provided the framework for implementation of the Framework Convention on Climate Change at the regional level. The NEPAD Agency, in collaboration with the African Union Commission and the African Ministerial Conference on the Environment, has initiated a process to review the implementation of the environment action plans.

25. The NEPAD Agency is currently preparing a programme proposal entitled "Climate change adaptation and mitigation programme: responding to climate change using science, technology and innovation". As part of an ongoing programme of integrating youth empowerment into NEPAD programmes, the process of engaging youth in climate change has started. This will be undertaken through the African Young Scientists Initiative on Climate Change, which will have its secretariat hosted at North-West University, South Africa. The aim of the Young Scientists Initiative is to create awareness and elicit the proactive engagement of youth in climate change issues and activities. A launch for the initiative is planned for mid-August 2011 on the theme: "Promoting the role of African indigenous knowledge systems in climate change adaptation and mitigation".

26. Within the framework of the African Union-NEPAD Africa Regional Strategy for Disaster Risk Reduction and the programme of action for its implementation, efforts are being made to integrate disaster risk reduction into poverty reduction and sustainable development initiatives. The extended programme of action for the implementation of the Africa Regional Strategy for Disaster Risk Reduction for the period 2006 to 2015 was presented and adopted at the second African Ministerial Conference on Disaster Risk Reduction. In addition, the African Advisory Group on Disaster Risk Reduction was re-established specifically to advise and support national platforms, as well as subregional and regional authorities, in the implementation of disaster risk reduction initiatives in Africa.

27. As a development catalyst, tourism development can generate a positive spillover effect on other sectors, as well as sharing the development cost. The African Union Commission and the NEPAD Agency are actively working in partnership with national, regional, continental and global organizations to promote a comprehensive programme of regional integration in the tourism sector. Moreover, recognizing the opportunities and challenges the tourism industry presents to Africa, a number of African countries have developed tourism master plans with the assistance of the United Nations World Tourism Organization and other development partners.

F. Information and communications technology

28. Following a decision taken at the fifteenth session of the NEPAD Heads of State and Government Orientation Committee in July 2010 in Uganda, the NEPAD e-Africa Commission was replaced by the NEPAD e-Africa Programme to drive the information and communications technology priority sector, in line with the new strategic orientation of the NEPAD Agency.

29. The NEPAD e-Africa Programme, tasked with developing policies, strategies and projects at continental level for the development of information and communications technology throughout Africa, has continued to advance the implementation of its key initiatives: the NEPAD information and communications technology broadband infrastructure network for Africa and the NEPAD e-Schools initiative. Efforts to extend the enabling environment of the NEPAD information and communications technology broadband infrastructure network across the continent were enhanced by the organization of several regional and national stakeholder workshops on the Kigali Protocol held in Cairo for North Africa and in the Gambia, Senegal, Nigeria and Djibouti for local stakeholders.

30. Progress was registered in implementation of the Uhurunet submarine cable. The construction and maintenance agreement and the supply contract for the Africa Coast to Europe (ACE)/Uhurunet cable were signed in France in June 2010. This segment of the Uhurunet cable will stretch from France to South Africa and will connect all countries on the west coast of Africa. Baharicom, the company charged with development of the Uhurunet submarine cable ring around Africa has been making efforts to raise equity and debt and meet the payment schedule of the supply contract.

31. Regarding the Umojanet cross-border terrestrial network, two business plans were completed. The first, completed in July 2010, covered 10 countries in Eastern and Southern Africa (Angola, Botswana, the Democratic Republic of the Congo, Malawi, Mozambique, Namibia, South Africa, the United Republic of Tanzania, Zambia and Zimbabwe) and the second, completed in September 2010, covered 12 countries in West and Central Africa (Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, Côte d'Ivoire, Equatorial Guinea, Ghana, Mali, the Niger, Nigeria and Togo).

32. In January 2011, the sixteenth African Union Summit endorsed the selection by the Technical Committee of the Presidential Infrastructure Championship Initiative of the African Union-NEPAD information and communications technology broadband infrastructure projects Uhurunet, Umojanet and the information and communications technology fibre-optic link along the proposed Nigeria-Niger-Algeria gas pipeline.

33. On the NEPAD e-Schools initiative, the NEPAD Agency has been working on modalities for closure of the demonstration phase of the initiative. Eighty demonstrations of NEPAD e-Schools have been implemented in 16 African countries. Each school in the demonstration project was equipped with a computer laboratory containing at least 20 personal computers, as well as a server and networking infrastructure and peripheral devices such as scanners, electronic whiteboards and printers. The schools were connected to the Internet to enable them to communicate with the rest of the world. The Agency has signed a memorandum

of understanding with the Internet Society to develop the capacity of key African stakeholders in the area of Internet governance.

G. Science and technology

34. Notable achievements of the African Science, Technology and Innovation Indicators Initiative to date are the establishment of focal points to spearhead the production of science, technology and innovation indicators at national level, capacity-building in science, technology and innovation data collection and publication of the African Innovation Outlook 2010, the first in a series of publications to inform the public about science, technology and innovation activities in African countries. This was launched in Ethiopia in May 2011 and contains the results of research and development surveys. It is expected to generate a debate to enrich the process of collecting better quality data. The NEPAD Agency and the Science, Technology and Innovation Indicators Initiative are also supporting the African Union Commission in establishing the African Observatory on Science, Technology and Innovation. A host country agreement has been signed with Equatorial Guinea and the Observatory will play the main role in coordination, data collection, and training, as well as dissemination of information on science, technology and innovation activities in Africa.

35. The African Science, Technology and Innovation Indicators Initiative programme has successfully completed its first phase in 19 African Union Commission member countries, designed to serve as a learning mechanism for mutual learning and knowledge sharing in conducting research and development and innovation surveys. As a result, guidelines for such surveys have been developed and adopted in participating countries. The measurement of science, technology and innovation as a support tool for policy formulation and implementation has opened up areas for further research and debate. Participating countries are collaborating on these matters and building a community of practice which will ensure that Africa speaks with one voice.

36. In November 2010, the Biosciences Eastern and Central Africa hub facilities were officially launched in Kenya. With financial support from Canada, the NEPAD Agency has constructed world-class laboratory facilities for scientists in Eastern and Central Africa. They will provide these scientists with the opportunity to carry out cutting edge research in the area of life sciences to address the challenges that face farmers in increasing agricultural productivity. Recently, the African Biosafety Network of Expertise was set up as a continent-wide service network managed by African staff with multidisciplinary expertise in biosafety systems. Since its inception, the Network has been providing training and science-based information to African regulators of agricultural biotechnology in order to help countries make informed decisions.

H. Gender mainstreaming, empowerment of women and civil society participation

37. The NEPAD Agency is working on the implementation of business incubators for African women entrepreneurs in the regional economic commissions. Currently, the aim is to finance pilot projects on business incubation for two selected regional

commissions, the Common Market for Eastern and Southern Africa (COMESA) and ECOWAS, with a budget of €1 million. The plan is to build upon this experience to roll it out to five other regional commissions. A memorandum of understanding was signed between the NEPAD Agency and COMESA in May 2010. The project was presented to the fourth meeting of Ministers responsible for gender and women's affairs, who took a decision to start the identification of women entrepreneurs and partner institutions. Subsequently, a technical consultation took place with COMESA and the Federation of National Associations of Women in Business in Eastern and Southern Africa (FEMCOM), and it was agreed that a World Bank initiative on business incubation will assist in disseminating lessons learned globally and in Africa.

38. The NEPAD Agency has embarked on strategic alliances with United Nations system agencies, such as the Economic Commission for Africa (ECA) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), in critical areas such as rural women, the economic empowerment of African women, knowledge generation and dissemination. Alongside preparation of the second call for proposals, the NEPAD/Spanish Fund for African Women's Empowerment undertook monitoring and evaluation of ongoing projects and closure of projects funded within the first call for proposals. The second phase of the Fund, which covers the period 2011 to 2013, represents the consolidation of the NEPAD programme on the empowerment of women in Africa.

39. The Fund has contributed to the promotion of gender mainstreaming and the development of essential tools for poverty alleviation, including increased numbers of women and girls trained in economically viable vocational skills. It has also assisted in the creation of employment opportunities through public and private partnerships, in skills development for women leaders in business and civil society and capacity-building in the use of information and communications technology in an effort to narrow the digital gap. The Fund has also supported the creation of income-generating activities for women through support for agroprocessing (45 machines) and business management training (600 women entrepreneurs).

I. African Peer Review Mechanism

40. The African Peer Review Mechanism has continued to strengthen its position as an instrument for advancing good governance and socio-economic development in Africa. Liberia officially joined the Mechanism at the African Peer Review Forum in January 2011. As of the end of July 2011, according to information provided by its secretariat, 30 countries had joined the Mechanism through signing the memorandum of understanding, namely: Algeria, Angola, Benin, Burkina Faso, Cameroon, the Congo, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, South Africa, the Sudan, the United Republic of Tanzania, Togo, Uganda and Zambia. The membership of the Mechanism represents more than 76 per cent of the population of Africa.

41. Mauritius and Ethiopia were peer-reviewed during the thirteenth and fourteenth Summits of the African Peer Review Forum, respectively. As of the end of July 2011, 14 countries had been peer-reviewed: Algeria, Benin, Burkina Faso, Ethiopia, Ghana, Kenya, Lesotho, Mali, Mauritius, Mozambique, Nigeria, Rwanda,

South Africa and Uganda. Other countries are at various stages of the review process: Sierra Leone and Zambia received a country review mission in February and May 2011, respectively, the United Republic of Tanzania will be reviewed in the second half of 2011 and Ghana and Kenya are also poised for a second-cycle periodic review.

42. The countries reviewed have also made progress in the implementation of their respective national programmes of action arising from the review process. To that end, the fourteenth Summit of the Forum, held in Addis Ababa in January 2011, reviewed progress reports on the implementation of the national programmes of Lesotho, Nigeria and South Africa, while the fifteenth Summit, held in Malabo in June 2011, reviewed progress reports on the implementation of the national programmes of Benin and Burkina Faso.

43. In order to streamline and fast-track the peer review process, some of the existing tools have been revised. For instance, the master questionnaire was revised and validated in March 2011 at a stakeholder workshop in Johannesburg and is now due to be reviewed by the Forum at its sixteenth Summit in Ethiopia in January 2012, after a thorough review by the Mechanism focal points, as directed by the Forum at its fifteenth Summit.

44. The Mechanism has continued to receive support from its three strategic partners, AfDB, ECA and the United Nations Development Programme. That support has included participation in country review missions and other forms of technical and financial assistance. In this regard, AfDB has continued to provide a grant to support the project to streamline and fast-track the African Peer Review Mechanism process. The aims of the project include revising and improving instruments and processes and strengthening the capacity of the staff of the secretariat of the Mechanism. ECA has also been instrumental in enhancing research on and knowledge of the Mechanism through a study on diversity management entitled "Findings from the African Peer Review Mechanism and a framework for analysis and policymaking", and by organizing workshops to raise awareness of the Mechanism and harmonize the national programmes of action and other national plans into a common medium-term expenditure framework.

III. Response of the international community: building on the momentum of international support for Africa's development

45. Africa has rebounded from the global economic and financial crisis despite the slowdown in the pace of the global economic recovery. In 2010, Africa grew by 4.9 per cent on average, up from 3.1 per cent in 2009.[1] However, this recovery is fraught with uncertainty, related to both the fragile global economic outlook and political instability in the subregions. In addition, Africa still lags behind other regions with regard to progress in achieving the Millennium Development Goals, in particular goals related to child and maternal mortality and access to sanitation and clean water.

[1] Organization for Economic Cooperation and Development (OECD), African Development Bank, Economic Commission for Africa (ECA) and United Nations Development Programme, *African Economic Outlook* (Paris, OECD, 2011).

46. For this reason, development partners need to fully deliver on their commitments to continue their support for Africa aimed at achieving the development agenda for the continent, including the implementation of NEPAD priorities. The Group of 8 (G-8) countries made historic commitments to increase aid to Africa at the Gleneagles Summit in 2005, but have so far fallen short on these promises. The G-8 summit held in France in 2011 saw a reaffirmation of the Gleneagles commitments. In late 2010, the Group of 20 also launched its development initiative, the Seoul Development Consensus for Shared Growth, which puts more emphasis on promoting economic growth through infrastructure development and job creation. Lastly, the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, held in September 2010 in New York, adopted a global action plan to achieve the Millennium Development Goals by their target date and devoted special attention to Africa.

47. The uncertain economic outlook for Africa's traditional development partners and the reduced fiscal space they are facing seem to indicate that non-traditional donors could gain further importance in the coming years. This includes both emerging economies as well as non-State actors, such as private foundations and philanthropists. Given the tightening of aid budgets in OECD countries in the aftermath of the global financial and economic crisis and its negative impact on aid disbursement, the fourth High-level Forum on Aid Effectiveness in Busan, Republic of Korea, in November and December 2011 will be an opportune moment for development partners to reaffirm their commitment to both aid quantity and effectiveness, as enshrined in the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action.

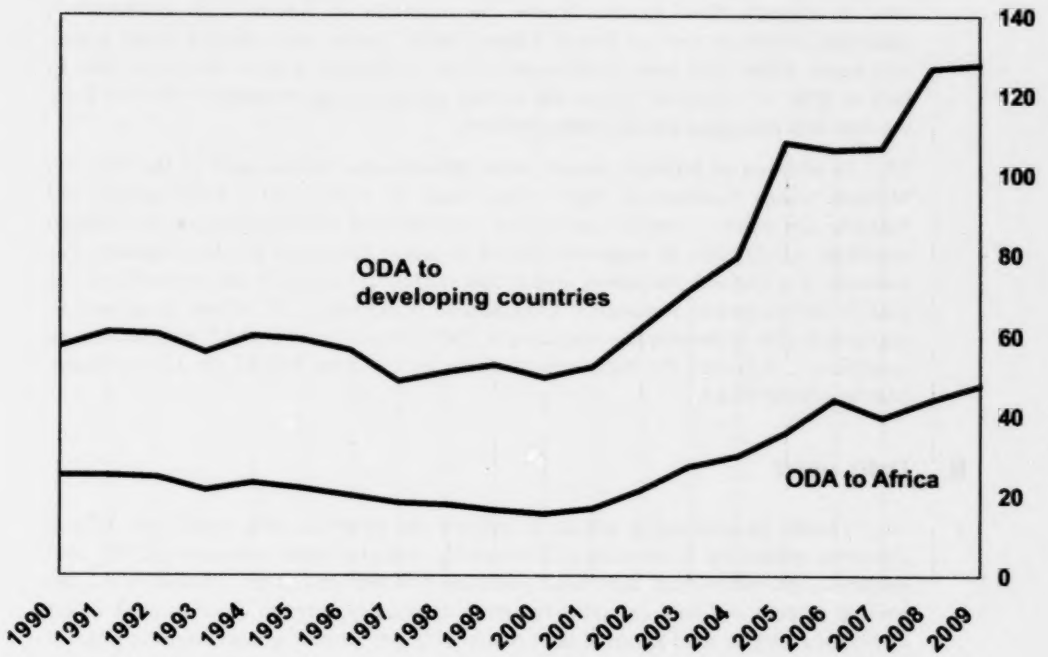
48. The Fourth United Nations Conference on the Least Developed Countries, held in May 2011 in Turkey, adopted the Programme of Action for the Least Developed Countries for the Decade 2011-2020 and the Istanbul Declaration. The objective of the Programme of Action is to ensure sustained economic growth and poverty reduction with a view to enabling half the number of least developed countries to graduate from the least developed country category by 2020. The Programme of Action identifies eight priority areas: productive capacity, including infrastructure, energy, science and technology and private sector development; agriculture, food security and rural development; trade; commodities; human and social development, including women's empowerment; addressing the impact of multiple crises and emerging challenges, such as climate change and sustainability; mobilizing financial resources for development and capacity-building; and good governance at all levels. Given that 33 out of the 48 least developed countries are in Africa, the implementation of the Programme of Action would go a long way to addressing the development challenges facing the continent.

A. Official development assistance

49. According to OECD, total official development assistance (ODA) from all donors reached $128 billion in 2009. Of this, $48 billion went to Africa, which represents an annual increase of 11.7 per cent in real terms over 2008 (see figure I below). In 2010, bilateral aid to Africa, not counting disbursements by multilateral agencies, rose by 3.6 per cent in real terms as compared to 2009 and reached $29.3 billion in 2010. Despite these increases, ODA continues to fall short of pledges made by the G-8 countries at the 2005 Gleneagles Summit, where they

committed to increasing total ODA to Africa by $25 billion. The Millennium Development Goals Gap Task Force estimates that there is a delivery gap of $18 billion and that Africa received $46 billion of total ODA from OECD Development Assistance Committee donors in 2010, which falls significantly short of the Gleneagles commitment of $64 billion.[2]

Figure I
Total official development assistance from all donors
(Billions of current United States dollars)



Source: Based on OECD/Development Assistance Committee online database 2011.

50. The G-8 Summits in Canada in 2010 and France in 2011 reaffirmed the G-8 partnership with Africa. In the Muskoka Initiative on maternal, newborn and child health, G-8 member countries committed to spending an additional $5 billion between 2010 and 2015 to achieve Millennium Development Goals 4 and 5 in developing countries. At the 2011 Summit in France the partnership was reaffirmed with the adoption of the G-8/Africa joint declaration: "Shared values, shared responsibilities". Also at the Summit the Deauville Partnership was launched, which lends support to the new democracies in the Arab countries and is committed to providing $20 billion through multilateral development banks to support sustainable and inclusive growth in Tunisia and Egypt.

[2] United Nations, *The Global Partnership for Development: Time to Deliver*, Millennium Development Goals Gap Task Force report (New York, forthcoming in 2011).

51. With regard to aid effectiveness, progress in achieving the targets set in the Paris Declaration on Aid Effectiveness in 2005 and the Accra Agenda for Action (A/63/539, annex) in 2008 is mixed. On the one hand, there is notable progress in untying aid to Africa, and to the least developed countries in particular, and 18 donors have signed up to the International Aid Transparency Initiative. On the other hand, progress in using country systems and reducing aid fragmentation remains limited. Against this backdrop, the international community is expected to renew its commitments to improving aid effectiveness at the upcoming fourth High-level Forum on Aid Effectiveness.

52. Non-traditional development partners are playing an increasingly important role in Africa's development. Under the umbrella of South-South cooperation, emerging countries such as Brazil, China, India, Turkey and others provide grants and loans, often with less conditionality than traditional donors. However, due to lack of data, it is difficult to provide a clear picture of the magnitude of ODA from the new and emerging development partners.

53. In addition to bilateral donors, new philanthropic actors such as the Bill and Melinda Gates Foundation, the Global Fund to Fight AIDS, Tuberculosis and Malaria and others, provide innovative development funding support to African countries which helps to augment limited domestic resources for development. For example, the Gates Foundation, which has started to report its aid to health to the OECD Development Assistance Committee, disbursed $1.8 billion in grants to improve health in developing countries in 2009, 36 per cent of which targeted Africa specifically. It is thus the third largest donor in this area, behind the United States and the Global Fund.

B. Debt relief

54. Thanks to continuing efforts to relieve the external debt burden of African countries within the framework of the heavily indebted poor countries (HIPC) debt initiative, the multilateral debt relief initiative (MDRI) and at the bilateral level, the amount of debt and debt servicing has been drastically reduced since its peak in the mid-1990s. While total external debt reached 73 per cent of gross domestic product (GDP) in sub-Saharan Africa in 1994, it fell to 21 per cent of GDP in 2010,[3] freeing resources and allowing countries to increase spending on poverty reduction and acceleration towards achieving the Millennium Development Goals.

55. Four countries, the Democratic Republic of the Congo, Guinea-Bissau, Liberia and Togo, have seen their debt reduced by significant amounts in the period from July 2010 to June 2011 through HIPC and MDRI. Upon reaching completion point, the Democratic Republic of the Congo was granted $12.3 billion in debt relief. After fulfilling outstanding requirements, Liberia reached completion point in June 2010 and saw its debt reduced by $4.6 billion in nominal terms. As a result, Liberia's external debt stock fell to 15 per cent of GDP. Guinea-Bissau received $1.2 billion in debt relief from the World Bank and the International Monetary Fund in December 2010. Lastly, in December 2010, upon reaching completion point, Togo saw an 82 per cent reduction in its external debt. Overall, 26 African countries have now reached completion point in the HIPC initiative and have benefited from debt

[3] International Monetary Fund (IMF), World Economic Outlook database, April 2011.

relief (see table 1 below). Members of the Paris Club contributed significantly to the debt relief for all four countries by agreeing to reductions and cancellations of bilateral debt. The contribution of Paris Club members to the debt relief of these four countries under the HIPC initiative amounted to more than $9 billion in nominal terms.

56. Despite this progress, there are renewed concerns about debt sustainability, in particular in light of the lingering impact of the global economic and financial crisis and the increased engagement and loan portfolio of new and emerging donors in Africa. According to recent reports, 9 of the 26 African countries that have so far benefited from the HIPC and MDRI initiatives still experience, or are at high risk of experiencing, debt distress.[4]

Table 1
Current and potential beneficiaries of HIPC and MDRI

Status	*Countries*
26 post-completion point countries	Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Congo, Democratic Republic of the Congo, Ethiopia, Gambia, Ghana, Guinea-Bissau, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, the Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, United Republic of Tanzania, Togo, Uganda, Zambia
4 post-decision point countries	Chad, Comoros, Côte d'Ivoire, Guinea
3 pre-decision point countries	Eritrea, Somalia, Sudan

Source: IMF, as of July 2011.

C. Foreign direct investment

57. According to the United Nations Conference on Trade and Development (UNCTAD), foreign direct investment (FDI) inflows to Africa decreased sharply in 2009 to $59 billion from a historic high of $72 billion in 2008, due mainly to the global economic and financial crisis. UNCTAD preliminary estimates for 2010 indicate that FDI flows to Africa declined by a further 14 per cent, to $50 billion.[5]

58. FDI declined in all subregions of the continent, with the exception of Central Africa, which benefited from large investments in Equatorial Guinea. In terms of sectoral distribution, investments in both manufacturing and the primary sector fell rapidly during the crisis, so that the services sector became the largest FDI recipient in Africa in 2009. Because of the quick recovery of global commodity prices after the crisis, FDI in the extractive industries is expected to rise in 2011. Indeed, while greenfield investments remained relatively low in 2010, mergers and acquisitions in the extractive industries were on the rise.

[4] Africa Progress Panel, *The Transformative Power of Partnerships, Africa Progress Report 2011* (Geneva, 2011).

[5] United Nations Conference on Trade and Development, "Global investment trends monitor No. 5", January 2011, available at http://www.unctad.org/en/docs//webdiaeia20111_en.pdf.

59. As investment inflows from traditional partners continue to decline, emerging countries have further strengthened their position in Africa with their share steadily increasing. For example, the share of FDI inflows originating in Asia rose from an average of 6.7 per cent between 1995 and 1999 to 15.2 per cent between 2000 and 2008.

60. African countries have also continued their efforts to improve the investment climate in order to attract FDI. By the end of 2008, they had concluded 715 bilateral investment treaties to promote and protect foreign investors. The regional economic commissions have also carried out regional investment programmes.[6] Africa's increased efforts are also reflected in an improved performance in the World Bank report, *Doing Business 2011: Making a Difference for Entrepreneurs*, which assesses the business regulation environment. In 2011, it lists 3 African countries among the 10 most improved economies. Development partners are supporting this process, inter alia, through the NEPAD-OECD Investment Initiative, which strengthens the capacity of African countries to design and implement reforms that improve their business climate.

D. Trade

61. Over the past year, virtually no progress has been made in reaching an agreement on issues affecting Africa in the Doha Round of trade negotiations. This is despite the commitment of the G-20 leaders, at the G-20 Summit in Seoul in November 2010, to conclude the Doha Round by the end of 2011, emphasizing the critical role of trade in the global economic recovery. In addition, negotiations on economic partnership agreements between the European Union and African regions have made very limited progress. At the third Africa-European Union Summit in Libya in November 2010, both sides renewed their commitment to finding solutions for the common concerns that remain over the economic partnership agreements. However, negotiations have stalled.

62. Following the second global review of the Aid for Trade initiative in 2009, Aid for Trade commitments to Africa increased further, amounting to $17 billion in 2009, a 21 per cent increase over 2008,[7] and focused on infrastructure and productive capacity. The third global review of the initiative will take place in 2011, creating additional momentum for Aid for Trade.

63. African countries are addressing the low level of trade within Africa and have reaffirmed their commitment to greater integration at the sixteenth African Union Summit. The African Union and NEPAD infrastructure programmes put an emphasis on regional connectivity and the regional economic commissions continue their efforts to achieve greater trade integration, most notably through a planned free trade agreement between COMESA, EAC and SADC, with the ultimate goal of establishing a single customs union. The three regional communities aim to complete the first phase of their integration efforts, a free trade area, within the next three years.

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[6] ECA and OECD, *The Mutual Review of Development Effectiveness in Africa: 2011 Interim Report* (2011), available at http://www.uneca.org/gpad/publications/mdre2011/MRDE%202011_Interim_EN.pdf.

[7] Ibid.

E. South-South cooperation

64. South-South cooperation has become increasingly important for Africa's development, complementing North-South cooperation. The rapid growth of Brazil, China, India and other emerging economies has had a dramatic and largely positive impact on the continent, leading to increasing flows of finance, trade, and development assistance. In the aftermath of the global financial and economic crises, economic linkages and other forms of cooperation have helped to mitigate the impact of the crises on the African economy and contributed to putting the continent back on the path of economic recovery. The G-20 Seoul Development Consensus for Shared Growth formalized this new role for emerging economies in the global arena.

65. Following the convening of a successful forum on China-Africa cooperation, other countries and regions have sought to institute formal structures to guide their cooperation and engagement with Africa. Examples are the second Viet Nam-Africa International Forum in August 2010, the Iran-Africa Forum in September 2010 and the second Afro-Arab Summit held in Libya in October 2010. At the latter, the African Union and the League of Arab States adopted an Africa-Arab partnership strategy aimed at creating an integrated Africa-Arab region and fostering closer economic and political cooperation.

66. In May 2011, India also deepened its cooperation with Africa during the second Africa-India Forum Summit held in Ethiopia on the theme: "Enhancing partnership: shared vision". The Africa-India Framework for Enhanced Cooperation was adopted to supplement the existing framework and induce an update of the existing joint Plan of Action that would incorporate a follow-up mechanism. India announced $5 billion worth of support to Africa over the next three years under lines of credit to aid Africa in the achievement of its development goals, offering an additional $700 million towards the development of new institutions and training programmes. The Forum also decided to institutionalize the summit process.

67. At the global level, in May 2011 in Indonesia, Non-Aligned Movement Ministers adopted a comprehensive outcome document outlining a shared vision of the Movement for the next 50 years and a commemorative declaration marking the 50th anniversary of the establishment of the Movement. The Bali commemorative declaration reaffirmed the need to expand and deepen South-South cooperation and enhance coordination in the formulation of common positions and strategies on economic and social development issues. The declaration also underlines the need for scaling up the global partnership and for finance for development to ensure the attainment of the internationally agreed development goals taking into account, inter alia, Africa's special needs.

F. Millennium Villages

68. Over the period under review, the Millennium Villages project continued to accelerate progress towards the achievement of the Millennium Development Goals at 10 sites in sub-Saharan African countries, reaching approximately 500,000 people.

69. Progress reports published after the first three years of operations indicate that the project approach is effective. Rigorous monitoring and evaluation of nine

research sites reveals that average maize yields have tripled and levels of chronic malnutrition in children under the age of two have declined by 43 per cent. School meal programmes have been established in all countries, with 70 per cent of primary school students receiving a school meal every day. This has had a significant positive impact on school enrolment and attendance.

70. Results in the health sector show that access to HIV testing during pregnancy has increased twofold, with institutional delivery rates improving by an average of 50 per cent. The project has recorded a reduction in malaria prevalence of more than 80 per cent and a sevenfold increase in bednet use. About 75 per cent of children have been immunized against measles and received vitamin A supplements in the past six months. The number of people with access to safer water has doubled and access to improved sanitation has increased threefold.

71. A number of countries are studying the lessons learned from the project to develop national strategies to achieve the Millennium Development Goals informed by this integrated model. In Ghana, Mali and Nigeria, Governments are developing national scale-up initiatives for the Millennium Development Goals based on the Millennium Villages experience, while in Malawi and Uganda the results of the project have informed the general discussion on the Millennium Development Goals at Government level.

IV. Support provided by the United Nations system

Strengthening of the Regional Coordination Mechanism of United Nations agencies and organizations working in Africa in support of the African Union and its NEPAD programme and the cluster system

72. During the period under review, the United Nations system continued to provide its technical and institutional support to the African Union NEPAD programme. Last year witnessed increased alignment of the programmes of various United Nations entities with those of the African Union Commission, the NEPAD Agency and the regional economic commissions. The United Nations system has been intensely involved in all these processes of institution-building and programme design and implementation at the regional, subregional, national and community levels.

73. The Regional Coordination Mechanism recorded significant achievements, as evidenced in enhanced coordination on the part of United Nations agencies and programmes. Specifically, the "Delivering as one" concept gained increased acceptance, with agencies recognizing the need to adopt a collective approach to support capacity-building in the African Union.

74. The eleventh session of the Regional Coordination Mechanism on the theme "Rio+20", held in November 2010, achieved significant outcomes, especially in relation to the implementation of the ten-year capacity-building programme for the African Union, which gave a renewed impetus to the implementation of the programme. The review of the programme was completed in 2010 and the main findings incorporated in the report of the Secretary-General (A/65/716-S/2011/54). The report finds considerable support for the programme among the members of the

African Union Commission. The report calls for strengthened engagement with the regional economic commissions, as well as the need for strengthened resource mobilization for the implementation of the programme.

75. The reconfiguration of the Regional Coordination Mechanism secretariat from being essentially led by the United Nations to becoming a joint United Nations-African Union secretariat has been consolidated and the African Union is increasingly exercising effective ownership and leadership. The joint secretariat now has a dedicated staff drawn from the African Union Commission and ECA, both of which have continued to provide strategic coordination and support to the Mechanism. Coordination processes have been strengthened, especially with the establishment of the NEPAD coordination unit within the office of the Chair of the African Union Commission. There has also been an improvement in coordination within and between clusters. In particular, the advocacy and communication cluster engaged representatives of the African media in the second Africa regional media dialogue in Lesotho in June 2011 and adopted the Maseru Declaration to enhance their advocacy role on African Union/NEPAD development priorities.

76. The Inter-Agency Task Force on Africa, convened by the Office of the Special Adviser on Africa at Headquarters, has continued to provide an effective framework for the agencies of the United Nations system to share expertise and experience. In particular, the Task Force has been active in providing inputs and suggestions for the preparation of the reports of the Secretary-General.

V. Conclusions and recommendations

77. **The past year has witnessed progress in the implementation of NEPAD projects and in moving forward the implementation of the African Peer Review Mechanism, an increase in ODA and Aid for Trade to African countries. Despite this progress, fundamental challenges remain in the implementation of NEPAD. As this year marks the celebration of the tenth anniversary of NEPAD, African countries should continue to implement and allocate more resources to NEPAD projects and promote private sector development, while development partners should take urgent steps to honour their commitments to Africa.**

78. **The tenth anniversary of NEPAD could be a turning point in the implementation of its sectoral priorities. This will require resolution and leadership to turn Africa's development vision and international commitments into policy actions and results. Ten years after the adoption of NEPAD, "business as usual" should not be an option. The following recommendations could be a starting point.**

79. **The NEPAD founding document stresses the need for partnership between African Governments and their own peoples, including the private sector and civil society. Much has been achieved in broadening the space for civic engagement. Now African countries need to build on this momentum and further strengthen mechanisms for the participation, inclusion and empowerment of all segments of society in the political and development processes.**

80. **Since the private sector is a key partner in the implementation of NEPAD, African countries should establish a business-friendly environment by further**

improving the investment climate. African countries also need to continue to undertake appropriate institutional reforms in order to attract private capital and develop public-private partnerships for financing infrastructure projects.

81. **Given the importance of agricultural development in ensuring food security and coping with recurrent food crises, African countries should strive to meet the Maputo Declaration target of allocating 10 per cent of national budgets to the agricultural sector and rural development and ensure better governance to effectively manage the resources allocated.**

82. **African women are Africa's face of hope, strength and opportunity. African countries should move beyond policies and plans to implementation, including prioritizing actions to achieve the goals of the African Women's Decade 2010-2020.**

83. **Now that 14 countries have been peer-reviewed, Governments should implement the agreed programmes of action and recommendations of the African Peer Review Mechanism country reports. The review process could move faster in order to accelerate the rate of completion of countries that have already launched the peer review process.**

84. **African countries should integrate climate change issues into economic planning and management at both national and regional levels and mainstream environmental policy into productive sectors, and international partners should support their mitigation and adaptation efforts. African countries should continue to engage in the preparatory process for the United Nations Conference on Sustainable Development (Rio+20) in 2012, whose outcome will affect the future sustainable growth of the continent.**

85. **Many countries and organizations that are not members of the OECD Development Assistance Committee are assuming an increasing role as development partners for African countries. Therefore, in order to improve aid effectiveness, there is a need to involve new and emerging development partners that are not Committee members. The upcoming fourth High-level Forum on Aid Effectiveness in Busan, Republic of Korea, could be the right platform. At the High-level Forum, development partners should take into account the African position, the Tunis Consensus, which calls for moving beyond aid effectiveness and focusing on development effectiveness, with the ultimate goal of reducing aid dependency and promoting self-reliance.**

86. **ODA and FDI can contribute to growth in Africa. Development partners should take urgent and collective action to substantially scale up aid disbursements, in order to meet their commitments of doubling assistance to Africa. They should also maintain the upward trend of FDI inflows to Africa.**

87. **In the context of high youth unemployment in Africa, development partners should conclude the long overdue Doha Round of multilateral trade negotiations with its development dimensions, as this would increase international trade and potentially boost prospects for job creation.**

88. **In the area of HIV/AIDS, development partners should continue supporting the strengthening of national health systems, research infrastructure and laboratory capacity and expand surveillance systems, with**

the goal of improving efforts to mitigate the impact of the epidemic, as reflected in the Political Declaration on HIV/AIDS of June 2011.

89. **Aid for Trade is an effective mechanism for supporting African countries in improving supply-side constraints and gaining from increased market access. As such, Aid for Trade measures should complement and not substitute for efforts to improve market access for African exports and strengthen the continent's contribution to world trade.**

90. **Despite a decrease in debt service costs through various bilateral and multilateral debt reduction initiatives, a number of African countries are experiencing debt distress that could impact their debt sustainability. To maintain debt sustainability, development partners should ensure that eligible countries for debt reduction get full debt relief from all creditors, including commercial creditors, and discourage lawsuits against heavily indebted poor countries by non-Paris Club creditors.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights defenders

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the present report, submitted by the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, in accordance with General Assembly resolution 64/163.

* A/66/150.

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Report of the Special Rapporteur on the situation of human rights defenders

Summary

The present report maps out the rights provided for in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms and analyses what the different rights entail, as well as the various aspects necessary to ensure their implementation. The report also addresses the most common restrictions and violations faced by human rights defenders and provides recommendations to facilitate implementation by States of each right.

The aim of the report is twofold: to increase the awareness of States of the rights provided for in the Declaration and to serve as a practical tool to defenders working to ensure respect for the rights to which they are entitled under this instrument.

Despite efforts to implement the Declaration, human rights defenders continue to face numerous violations of their rights. It is hoped that the present report will contribute to the development of a safer and more conducive environment for defenders to be able to carry out their work. A more comprehensive commentary concerning the Declaration is available in the section on the work of the Special Rapporteur of the website of the Office of the United Nations High Commissioner for Human Rights.

Contents

		Page
I.	Introduction	3
II.	Right to be protected	4
III.	Right to freedom of assembly	6
IV.	Right to freedom of association	8
V.	Right to access and communicate with international bodies	9
VI.	Right to freedom of opinion and expression	11
VII.	Right to protest	13
VIII.	Right to develop and discuss new human rights ideas	14
IX.	Right to an effective remedy	15
X.	Right to access funding	16
XI.	Permissible derogations and the right to defend human rights	17
XII.	Conclusions and recommendations	18

I. Introduction

1. The present report is the fourth submitted to the General Assembly by the present Special Rapporteur, and the eleventh report submitted by the mandate holder on human rights defenders to the Assembly since 2001. The report is submitted pursuant to Human Rights Council resolution 16/5 and Assembly resolution 64/163.

2. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders) reaffirms rights that are instrumental to the defence of human rights, including freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to access funding and to develop and discuss new human rights ideas. Implementing the Declaration is a prerequisite for the creation of a conducive environment for human rights defenders to be able to carry out their work.

3. Although some States have made efforts to guarantee that domestic legislation reflects the obligations of States that are contained in the Declaration and in other international human rights standards, the current trend in many countries is to pass laws and regulations restricting the space for human rights activities. Many national laws are incompatible with international standards and with the Declaration in particular. Even where efforts are made to adopt laws that are in line with international standards, their ineffective implementation often remains a problem.

4. Despite the fact that more than a decade has passed since the Declaration was adopted by the General Assembly, it is not an instrument that is sufficiently known, either to those who shoulder the main responsibility for its implementation, namely Governments, or to those whose rights it sets out to protect, human rights defenders. Accordingly, additional efforts are needed to improve understanding of the rights and responsibilities contained in the Declaration.[1]

5. The purpose of the present report is to fill this awareness gap by enhancing the understanding of States of the rights and responsibilities contained in the Declaration, as well as increasing awareness of this instrument among relevant non-State actors who can contribute to the development of a conducive environment for the work of defenders. Additionally, the report aims to build the capacity of human rights defenders to ensure respect for the rights that they are entitled to under the Declaration. The report is based mostly on the analysis of information received and reports developed by both mandate holders, the current Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, and her predecessor Hina Jilani.

6. The report is divided into 10 sections, each addressing a discrete right provided for in the Declaration, namely: the right to be protected, the right to freedom of assembly, the right to freedom of association, the right to access and communicate with international bodies, the right to freedom of opinion and

[1] Although not a legally binding instrument, the Declaration contains rights that are already recognized in many legally binding international human rights instruments, including the International Covenant on Civil and Political Rights. The Declaration specifies how the rights included in major human rights instruments apply to human rights defenders and their work. In addition, the Declaration was adopted by consensus by the General Assembly, which consequently represents States' strong commitment towards its implementation.

expression, the right to protest, the right to develop and discuss new human rights ideas, the right to an effective remedy and the right to access funding. A final section addresses permissible derogations to these rights. The Special Rapporteur then sets forth a series of recommendations regarding the implementation of each right.

7. In accordance with the mandate of the Special Rapporteur to integrate a gender perspective throughout her work, the present report refers to the specificities of the situation of women human rights defenders and the particular challenges they face. Women defenders are more at risk of being subjected to certain forms of violence, prejudices, exclusion, repudiation and other violations, than their male counterparts. This is often due to the fact that women defenders are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society. The term "women human rights defenders" in the present report refers to women who, individually or in association with others, act to promote or protect human rights, including women's rights. The term "women human rights defenders" can also refer to male human rights defenders working on women's rights as well as on gender issues more generally.

8. It is hoped that this report will contribute to the development of a safer and more conducive environment for defenders to be able to carry out their work. A more comprehensive commentary concerning the Declaration is available in the section on the work of the Special Rapporteur of the website of the Office of the United Nations High Commissioner for Human Rights (www2.ohchr.org/english/issues/defenders/index.htm).

II. Right to be protected

9. The State's duty to protect the rights of defenders from violations committed by States and non-State actors is derived from each State's primary responsibility and duty to protect all human rights, as enshrined in article 2 of the International Covenant on Civil and Political Rights, which establishes the obligation of States to guarantee all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination. The Declaration on Human Rights Defenders establishes the State's duty to protect human rights defenders in the preamble to the Declaration as well as in its articles 2, 9 and 12.

10. The obligation of States to protect includes both negative and positive aspects. On the one hand, States must refrain from violating human rights. On the other hand, States should act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States should prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation. To enhance the protection of defenders, States should also harmonize their domestic legal frameworks with the Declaration on Human Rights Defenders.

11. The obligation to protect also involves ensuring that defenders do not suffer from violations of their rights at the hands of non-State actors. Failure to protect defenders could, in particular circumstances, engage the State's responsibility. For

instance, acts and omissions committed by non-State actors under the instructions, control or direction of the State can, under certain circumstances, give rise to State responsibility.

12. The Declaration reaffirms the responsibility of everyone not to violate the rights of others, including the responsibility of non-State actors to respect the rights of human rights defenders (see arts. 10, 11, 12 (3) and 19). Accordingly, all non-State actors, including armed groups, the media, faith-based groups, communities, private companies and individuals should refrain from taking any measures that would result in preventing defenders from exercising their rights.

13. To ensure the personal safety of defenders at imminent risk, States have developed different measures and protection programmes. Many States use their witness protection programmes; others have put in place protection measures, including establishing specialized investigative units for crimes against human rights activists, setting up early warning systems, providing police protection and bodyguards, and establishing programmes for emergency placement of defenders in other regions or countries.

14. Many of these measures, however, have received criticism with regard to their efficiency and sustainability. Witness protection programmes, for example, are not sufficient to provide for the safety of defenders since in most cases they have not been designed for that purpose and do not take their specific needs into account. In other instances, the outcome of risk assessments has failed to match the situation of vulnerability faced by defenders requesting protection. Further, protective measures have, on some occasions, failed to address the specificities of the profile of defenders pertaining to gender, ethnic affiliation, leadership position and place of residence. In other cases, bodyguards have transmitted information to intelligence agencies. Defenders have also raised concerns about the privatization of protection measures, which can place the responsibility for protection in the hands of private security companies. Defenders fear former paramilitaries could be employed by these companies.

15. Concerning protection measures for women defenders and those working on women's rights or gender issues, in the vast majority of cases there are no specific mechanisms in place or, where they do exist, they are often hindered by a lack of implementation, political will or gender specificity.

16. Adequate protection requires a comprehensive policy from Governments establishing an adequate environment which is respectful of the work of defenders, where the legal framework is in line with the Declaration's provisions, and those taking adverse actions against defenders are brought to justice. Addressing impunity, in line with article 12 of the Declaration, is a key step in ensuring a safe environment for defenders.

17. In every region of the world, defenders — including women defenders and those working on women's rights or gender issues — continue to face intimidation, threats, killings, disappearances, torture, ill-treatment, arbitrary detention, surveillance, administrative and judicial harassment and, more generally, stigmatization by both State and non-State actors. Violations faced by women defenders may take a gender-specific form, ranging from verbal abuse based on their sex, to sexual abuse and rape. Defenders also confront violations of the exercise of their rights to freedom of opinion and expression, access to information,

access to funding, free movement and freedoms of association and peaceful assembly. In many countries, a climate of impunity for violations committed against defenders prevails.

18. Specific situations impeding the work of human rights defenders and leading to a highly insecure environment include:

(a) The stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, or working on behalf of foreign countries or their interests. Also, women defenders often face further stigmatization by virtue of their sex or the gender-based rights they advocate;

(b) Prosecution of defenders and criminalization of their activities. Defenders are arrested and prosecuted on false charges. Others are detained without charge, often without access to a lawyer, medical care or a judicial process, and without being informed of the reason for their arrest;

(c) Attacks by non-State actors and a climate of impunity. Non-State actors have been increasingly involved in attacks on human rights defenders. Guerrillas, private militias, vigilante groups and armed groups have been implicated in violence against defenders, including beatings, killings and various acts of intimidation. Private companies have also been directly or indirectly involved in acts of violence against defenders.

19. In addition, community leaders and faith-based groups are increasingly resorting to the stigmatization of — and attacks against — defenders working on issues such as the rights of lesbian, gay, bisexual and transgender persons, violence against women and domestic violence. Also, women human rights defenders working in the area of domestic violence and other types of violence against women are often pressured by family members or threatened by the perpetrators to drop cases.

20. In some parts of the world, the media has been involved in violations committed against human rights defenders, notably in relation to violations of their right to privacy. In certain States, defenders have been subjected to denigration campaigns in the press, although sometimes the perpetrators were State-owned outlets.

III. Right to freedom of assembly

21. In its articles 5 and 12, the Declaration on Human Rights Defenders recognizes the right to freedom of assembly and the legitimacy of participation in peaceful activities to protest against violations of human rights. The right to peaceful assembly is essential for human rights defenders; without the guarantee of this right and the protection against its violation by State officials and non-State entities, the ability of defenders to fulfil their role in the protection and promotion of human rights and fundamental freedoms is severely restricted.

22. The right to meet or assemble peacefully applies to every man and woman acting to promote and protect human rights, providing they accept and apply the principles of universality and non-violence. As women's inequality in the enjoyment

of rights is rooted in "tradition, history and culture, including religious attitudes",[2] States should ensure that these attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all rights,[2] including the right to freedom of assembly.

23. The Declaration protects numerous forms of assembly, from meetings inside private residences to conferences in public places, demonstrations, vigils, marches, picket lines and other kinds of assemblies, with the aim of promoting and protecting human rights. Also, this right can be exercised individually and in association with others. Accordingly, it is not necessary for a non-governmental organization to have legal personality to participate in assemblies, including a demonstration.

24. Human rights defenders must exercise these activities peacefully in order to be protected under the Declaration. The Special Rapporteur is concerned about the frequent excessive use of force by State agents in responding to situations involving freedom of assembly, which in some instances has provoked violent reactions from otherwise peaceful assemblies. Such behaviour clearly contravenes the Declaration and makes the State accountable for provocations that result in violence. Under the Declaration defenders are entitled to effective protection under national law against actions committed by the State that result in human rights violations. The Declaration also provides defenders with protection when protesting against violent acts of other groups or individuals. Consequently, the protection afforded in the Declaration covers violations committed by both State and non-State actors.

25. Concerning permissible restrictions, freedom of assembly can be subjected to limitations in accordance with applicable international obligations. Article 21 of the International Covenant on Civil and Political Rights defines the necessary requirements for the limitations to be considered permissible. Firstly, restrictions must be in conformity with the law — that is, restrictions can be imposed not only by law but also through a more general statutory authorization, such as an executive order or a decree.[3] Secondly, restrictions must be necessary in a democratic society, which means that limitations must be proportional — States must first exhaust any alternatives that limit the right to a lesser degree — and must comply with minimum democratic principles.[4] Finally, the only grounds upon which an interference with the right to peaceful assembly is permitted are: national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

26. Restrictions imposed on the right to freedom of assembly have been broadly applied to prohibit or disrupt peaceful human rights assemblies, frequently on the pretext of the need to maintain public order and relying on counter-terrorism legislation, arguments and mechanisms. The mandate holder has identified the following trends as violations of the right to freedom of assembly: (a) use of excessive force against defenders during assemblies; (b) arrest and detention of defenders while exercising their right to assemble or to prevent them from taking part in demonstrations; (c) threats against defenders and members of their families prior to, during or after their participation in a peaceful assembly; (d) judicial

[2] Human Rights Committee, general comment No. 28 concerning article 3 of the International Covenant on Civil and Political Rights (equality of rights between men and women), para. 5.

[3] Manfred Nowak, *United Nations Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised ed. (N.P. Engel, 2005), p. 490, para. 19.

[4] Ibid., p. 489, paras. 21 and 22.

harassment and prosecution of defenders; (e) travel restrictions imposed on defenders to prevent them from participating in assemblies outside their country of residence; and (f) restrictions imposed through legislative and administrative measures.

27. Women defenders often face more risks than their male counterparts when participating in collective public action because of perceptions of the traditional role of women in some societies, and they become targets of non-State actors. In some cases, retaliation against women defenders takes such forms as rape and sexual assault, which can have adverse social consequences in addition to causing physical and psychological harm.

IV. Right to freedom of association

28. The right to freedom of association is recognized in many international and regional instruments, including the Declaration on Human Rights Defenders, which provides in article 5 for the right of everyone, individually and in association with others, to form, join and participate in non-governmental organizations, associations or groups. The Declaration underscores that the promotion and protection of human rights is a legitimate purpose for an association to pursue.

29. The right to freedom of association applies to every man and woman working to promote and protect human rights, providing they accept and apply the principles of universality and non-violence.

30. The right of women to participate in public life, including through the promotion and protection of human rights, is contained in the Universal Declaration of Human Rights, as well as in various international treaties. Under article 7 of the Convention on the Elimination of All Forms of Discrimination against Women, States agree to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure that women enjoy the right to, inter alia, participate in non-governmental organizations and associations concerned with the public and political life of the country on equal terms with men.

31. There are both negative and positive obligations on States arising from the right to freedom of association, including the obligation to prevent violations of this right, to protect those exercising this right and to investigate violations of this right. Given the importance of the role that human rights defenders play in democratic societies, the free and full exercise of this right places a duty on States to create legal and real conditions in which defenders can freely carry out their activities. Also, although associations are required to have some kind of institutional structure, they do not need to assume a legal personality to operate and de facto associations are equally protected under the Declaration.

32. Concerning permissible restrictions, the right to freedom of association is not absolute and it can be subjected to limitations in accordance with applicable international obligations. The International Covenant on Civil and Political Rights (art. 22) specifically details the requirements for such limitations to be admissible. For any restriction on the right to freedom of association to be valid, it must meet the following conditions:

(a) It must be provided by law — that is through an act of Parliament or an equivalent unwritten norm of common law. Limitations are not permissible if introduced through Government decrees or other similar administrative orders;

(b) It must be necessary in a democratic society. The State must demonstrate that the limitations are necessary to prevent a real threat to national security or the democratic order and that other less invasive measures are not adequate to achieve this purpose;

(c) Such limitations may only be imposed in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

33. This provision, read together with articles 5 and 17 of the Declaration on Human Rights Defenders, must be understood to involve the protection of human rights organizations that are critical of State policies, that publicize human rights violations perpetrated by authorities, or that question the existing legal and constitutional framework.

34. The Special Rapporteur has observed that in many countries national laws that regulate the functioning of non-governmental organizations impose severe restrictions on their registration, funding, management and operation. In particular, domestic legislation has been used to interfere with the internal management and activities of non-governmental organizations, including the placing of restrictions on the types of activities that civil society organizations are allowed to carry out without prior Government approval. The discretionary interpretation of existing laws has also permitted authorities to initiate legal proceedings against human rights organizations for minor infractions or to dissolve them without recourse to appropriate remedies or judicial supervision. In other instances, legislation seems to be in accordance with international standards, but registration procedures have been used arbitrarily to deny protection to human rights non-governmental organizations that are very critical of the Government.

V. Right to access and communicate with international bodies

35. The right to access and communicate with international bodies, as recognized in the Declaration on Human Rights Defenders, is contained in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (art. 11), the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (art. 15), and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (art. 13). The optional protocols include a specific provision asking States parties to take all appropriate measures to ensure that individuals under their jurisdiction are not subject to ill-treatment or intimidation, or prejudiced in any way, for having communicated with or provided information to the monitoring bodies of the respective instruments.

36. This right is also protected under other relevant provisions such as the right to freedom of movement and the right to freedom of expression.[5] The Declaration recognizes the right to access and to communicate with international bodies under articles 5 (c) and 9 (4). By referring explicitly to this right under two separate provisions, the Declaration recognizes that accessing and communicating with international bodies are essential for human rights defenders to carry out their work and to alert the international community to human rights problems and bring key cases to the attention of regional and international human rights mechanisms.

37. The Declaration protects a wide range of collaboration activities with international bodies and agencies, from the submission of information or complaints related to specific cases to the presentation of information on the internal human rights situation in a particular country at international human rights venues.[6] As regards the different bodies and mechanisms that defenders can engage with, the Declaration provides for the right to communicate with a wide range of institutions and mechanisms, including non-governmental organizations, intergovernmental organizations and international bodies. These mechanisms can include United Nations bodies, including United Nations representatives and mechanisms, such as treaty bodies, special procedures, the universal periodic review mechanism and field presences of the Office of the United Nations High Commissioner for Human Rights, and other bodies outside the United Nations system.

38. The mandate on human rights defenders has underscored how the United Nations human rights treaty bodies and the various special procedures of the Human Rights Council depend to a great extent on the information provided to them by human rights defenders. This can be used as a valuable early warning system to alert the international community to a developing or imminent threat to peace.

39. In relation to the protection afforded to defenders that collaborate with international mechanisms, the Declaration specifies the obligation of States to take the necessary measures to protect defenders in the exercise of their rights (art. 12 (2)). Furthermore, non-State actors can be held accountable for violations of the rights of defenders amounting to offences or crimes under national law.

40. The Human Rights Council and its predecessor, the Commission on Human Rights, have also addressed this issue through several resolutions and have requested the Secretary-General and the United Nations High Commissioner for Human Rights to report on cases of individuals or groups who have been intimidated or suffered reprisals for having cooperated or attempted to cooperate with the United Nations, including its representatives and mechanisms, in the field of human rights (see Human Rights Council resolution 12/2).

41. Under the mandate, there have been interventions in cases where human rights activists have not been granted permission to leave their countries to participate in international human rights events, including the Human Rights Council, or have been harassed or subjected to serious reprisals upon return to their homes from these

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[5] See Human Rights Committee, Concluding observations on Uzbekistan (CCPR/CO/83/UZB, para. 19) and Human Rights Committee, Concluding observations on Morocco (CCPR/CO/82/MAR, para. 18), cited in "Right to access international bodies", Human Rights Defenders Briefing Papers series (International Service for Human Rights, 2009), pp. 5 and 6.

[6] See also "Right to access international bodies", Human Rights Defenders Briefing Papers series (International Service for Human Rights, 2009), p. 5.

events. There have also been interventions in cases of individuals who have been targeted after they have submitted information or complaints to international human rights mechanisms, in particular under the mandate on human rights defenders and other special procedures of the Human Rights Council. The mandate holder remains extremely concerned about allegations received reporting acts of intimidation, threats, attacks, arbitrary arrests, ill-treatment, torture and killings of human rights defenders who collaborated with the United Nations or other international mechanisms.

42. In addition to the cases reported directly to the mandate holder on the situation of human rights defenders, the reports of the Secretary-General related to cooperation with representatives or mechanisms of United Nations human rights bodies contain descriptions of situations in which persons have reportedly been intimidated or suffered reprisals by Governments and non-State actors for seeking to cooperate or having cooperated with the United Nations, its representatives and mechanisms in the field of human rights, for having provided testimony or information to them; for having availed themselves of procedures established by the United Nations; for having provided legal assistance for this purpose; for having submitted communications under procedures established by human rights instruments; or for being relatives of victims of human rights violations or for having provided legal or other assistance to victims. For example, the cases of reprisals described in the 2010 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/14/19) include instances of attacks, threats, intimidation and harassment; detention, imprisonment and physical violence against defenders, including murder; and campaigns aimed at stigmatizing or delegitimizing the activities of human rights defenders. These acts are aimed at hampering or preventing individuals and groups from cooperating with the United Nations, its representatives and mechanisms (ibid.).

VI. Right to freedom of opinion and expression

43. The right to freedom of opinion and expression is of crucial importance to the work of human rights defenders. Without this right defenders would not be able to perform their monitoring and advocacy work to promote and protect human rights. This right applies to both men and women promoting and protecting human rights, providing they accept and apply the principles of universality and non-violence. In the case of women human rights defenders, States need to ensure that tradition, history, culture and religious attitudes are not used to justify violations of women's right to equality before the law and to the equal enjoyment of all rights.[7]

44. Article 6 of the Declaration recognizes three different aspects of the right to equality before the law and equal enjoyment of all rights: (a) the right to hold opinions without interference; (b) the right of access to information; and (c) the right to impart information and ideas of all kinds. With regard to the first aspect, the right to hold opinions, no restrictions are permitted.[8]

[7] Human Rights Committee, general comment No. 28, para. 5.

[8] Human Rights Committee, general comment No. 10 concerning article 19 of the International Covenant on Civil and Political Rights (freedom of opinion), para. 1.

45. Concerning the other two aspects, article 19 (3) of the International Covenant on Civil and Political Rights establishes that "the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted, which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself."[9] According to article 19 (3), restrictions must be "provided by law" and must be justified as being "necessary" for one of the following purposes: (a) respect of the rights or reputations of others; and (b) the protection of national security or of public order (*ordre public*), or of public health or morals.[10]

46. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has emphasized that restrictions on the following dimensions of the right to freedom of expression are not permissible:

(a) Discussion of Government policies and political debate; reporting on human rights, Government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;

(b) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;

(c) Access to or use of information and communications technologies, including radio, television and the Internet (see A/HRC/14/23, para. 81).

47. The fulfilment of this right requires States to comply with both positive and negative obligations, including abstaining from interfering with the enjoyment of the right; protecting the right by working to prevent, punish, investigate and provide redress for harm caused by private persons or entities; and taking positive measures for the realization of the right (ibid., para. 25).

48. Despite protection under international and regional human rights instruments and national constitutions, the right to freedom of expression has suffered the most adverse restrictions under national security or anti-terrorism laws. In many instances, these laws have been used to criminalize dissent and suppress the right to hold States accountable. Provisions of laws on internal security, official secrets and sedition, among others, have been used to deny freedom of information to defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

49. Other common restrictions and violations to the right to freedom of opinion and expression include: (a) the use of civil and criminal defamation and libel proceedings against defenders speaking out against human rights violations; (b) the adoption of laws restricting printing and publication; and (c) the censorship, suspension, closing or banning of media outlets.

[9] Ibid., para. 4.
[10] Ibid., para. 4.

50. Additionally, defenders and journalists are often targeted for investigating human rights abuses. They are subjected to threats, attacks and intimidation, and some have been abducted and/or killed. They have also been arrested and detained following the publication of letters calling for the improvement of the human rights situation, for publishing articles online criticizing governmental policies and for denouncing human rights violations. Women journalists and media professionals are also exposed as a result of their work. This group includes women investigative journalists working on human rights-related issues, women columnists advocating human rights reform, women reporters monitoring and reporting violations of human rights, and women bloggers.

VII. Right to protest

51. The right to protest entails the enjoyment of a set of internationally recognized rights that are reiterated in the Declaration on Human Rights Defenders, including freedom of opinion and expression, freedom of association, freedom of peaceful assembly and trade union rights such as the right to strike.

52. The protection of the right to protest comprises both negative and positive obligations. The State has a negative obligation to abstain from interfering and a positive obligation to protect rights holders in the exercise of this right, particularly when persons protesting hold unpopular or controversial views, or belong to minorities or other groups exposed to higher risks of attack and other forms of intolerance. Additionally, respecting the right to protest involves the obligation of States to take concrete steps to build, maintain and strengthen pluralism, tolerance and an open attitude to the expression of dissent in society.

53. The right to protest is an essential element of the right to participation in a democratic society and restrictions imposed on this right must be closely examined regarding their necessity and reasonableness. Restrictions may be imposed on public demonstrations, providing their purpose is to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

54. Common restrictions and violations to the right to protest include: (a) bans and unjustified restrictions on demonstrations; (b) unnecessary requirements to obtain authorizations; (c) lack of remedies to appeal decisions denying the authorization to hold demonstrations; (d) legislation not complying with international human rights law; (e) legislation on counter-terrorism with definitions of "terrorism" that are so broad that they can jeopardize participation in public demonstrations; and (f) inadequacies in the legal framework on the right to strike, including the criminalization of the right to strike and the failure to incorporate the right to strike in domestic law.

55. Violations suffered by defenders as a consequence of their participation in protests range from threats following demonstrations to arbitrary arrest and detention, intimidation, ill-treatment, torture and excessive use of force by authorities. A cause for concern is the number of peaceful protesters who have been injured or killed during violent crackdowns by the authorities. The mandate holder has also identified specific protection needs concerning some groups of protestors, including women defenders and defenders working on lesbian, gay, bisexual and transgender rights; student activists; trade unionists; and defenders monitoring and

reporting on demonstrations. Defenders engaged in protests linked to demands for democratic reforms; the anti-globalization movement; election processes; peace demonstrations; and land rights, natural resources and environmental claims are often in need of specific protection.

VIII. Right to develop and discuss new human rights ideas

56. The right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This right may be seen as an elaboration of the right to freedom of opinion and expression, the right to freedom of assembly and the right to freedom of association, which are protected under many regional and international instruments.[11] The Declaration on Human Rights Defenders affirms the right to develop and discuss new human rights ideas, and to advocate their acceptance in article 7.

57. Many of the basic human rights that today we take for granted took years of struggle and deliberation before they took final shape and became widely accepted. A good example is the long struggle of women in many countries to gain the right to vote. Today, we see the case of defenders working on lesbian, gay, bisexual and transgender rights. In many countries around the world, these activists are targeted for their work, harassed, and sometimes killed, because of their work in defending a different idea of sexuality. Similarly, women human rights defenders are more at risk of suffering certain forms of violence because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.

58. Although the rights of women defenders and those working on women's rights or gender issues are not new human rights, in some contexts they may be perceived as new because they address issues that might challenge tradition and culture. Tradition and culture are not static, however, as the United Nations independent expert in the field of cultural rights has argued, saying that "cultures are constantly evolving, as are the concepts of human rights" (A/HRC/14/36, para. 34).

59. It is because of the visions of courageous defenders that human rights have developed and transformed our societies. These visionaries have held "that women deserve the same rights as men, that empires are not inevitable, that indigenous peoples are human beings, or that torture and genocide are ethically reprehensive and need not be tolerated. Similarly, they ask people to imagine that international norms can be established and that nation States need not be allowed to claim that however they wish to behave and treat people is strictly their own business."[12] However, these ideas often meet resistance, especially because they challenge the legitimacy of the status quo as well as sociocultural norms and traditions.

60. Nonetheless, ideas that "offend, shock or disturb" are protected under the right of freedom of expression. This is a crucial part of what is required for a "democratic

[11] See also "Protecting human rights defenders", Human Rights First, available from www.humanrightsfirst.org/our-work/human-rights-defenders/protecting-human-rights-defenders.

[12] Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* (University of Pennsylvania Press, 1998), p. 282.

society" to exist.[13] Pluralism, tolerance and broadmindedness are particularly important in a democratic society. Democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position. The State is the ultimate guarantor of the principle of pluralism, a role that entails positive obligations to secure the effective enjoyment of rights. These obligations are of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimization.[14]

61. In this context, the right to develop and discuss new human rights ideas is an important provision to support and protect those defenders that advocate new visions and ideas of human rights.

IX. Right to an effective remedy

62. Article 9 of the Declaration provides for the right of everyone to benefit from an effective remedy and to be protected in the event of a violation of his or her human rights and fundamental freedoms. In the framework of the Declaration, the obligation to provide defenders with an effective remedy requires States to ensure a prompt and impartial investigation into the alleged human rights violations, the prosecution of the perpetrators, the provision of reparations, as well as the enforcement of decisions or judgements.

63. The right to an effective remedy also entails effective access to justice, which can involve not only judicial but also administrative or quasi-judicial mechanisms. Impartial investigations and the prosecution of perpetrators require an effective and independent judiciary. In many instances, however, weaknesses in the judicial system and in the legal framework have prevented defenders from seeking and obtaining justice. States should take all necessary steps to ensure that violations against defenders are brought before tribunals or other complaints mechanisms, such as national human rights institutions or truth and reconciliation mechanisms.

64. Reparations are also a fundamental aspect of the right to an effective remedy. The obligation to provide an effective remedy is not fulfilled without reparation to individuals whose rights have been violated. In addition to compensation, reparations can involve "restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations".[15]

65. Nevertheless, the information received by the mandate holder often illustrates the lack of effective response by authorities to defenders, which has resulted in impunity for those abusing their rights. Judicial authorities have shown an alarming lack of diligence in investigating cases of abuse against defenders and leniency towards suspected perpetrators, especially members of the security and armed

[13] Nowak, United Nations Covenant, p. 505.

[14] Bączkowski and Others v. Poland (Application No. 1543/06), European Court of Human Rights, Chamber judgment of 3 May 2007.

[15] Human Rights Committee, general comment No. 31 concerning the nature of the general legal obligations imposed on States parties to the International Covenant on Civil and Political Rights, para. 16.

forces. Similarly, defenders have raised impunity as one of the main concerns regarding violations committed by non-State actors. In many instances, complaints by defenders about violations of their rights are either never investigated or dismissed without justification.

66. The mandate holder has also repeatedly received information about the situation of women defenders working on issues of impunity and access to justice, including witnesses and victims of human rights violations seeking redress, as well as the lawyers, individuals and organizations representing or supporting them. This group appears to be particularly at risk in certain countries.

67. The Special Rapporteur is greatly concerned by these trends, which reveal that impunity for human rights abuses against defenders remains unacceptably widespread. Ending impunity is a necessary condition to ensure the security of defenders.

X. Right to access funding

68. The right to access funding is an inherent element of the right to freedom of association, which is contained in major human rights instruments. The Declaration on Human Rights Defenders explicitly recognizes the right to access funding as a self-standing substantive right under article 13. The wording of article 13 covers the different phases of the funding cycle. States are under an obligation to permit individuals and organizations to seek, receive and utilize funding. The Declaration requires States to adopt legislative, administrative or other measures to facilitate or, at a minimum, not to hinder the effective exercise of the right to access funding.

69. Article 13 of the Declaration also specifies that the funds must be used "for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". In addition, article 3 of the Declaration establishes that while domestic legislation is the proper legal framework to guarantee the enjoyment of the right to access funding, legislation must be consistent with international human rights norms and standards.

70. Concerning the origin of the funds, the Declaration protects the right to receive funding from different sources, including foreign ones. Given the limited resources available for human rights organizations at the local level, restrictions on access to international funding can gravely affect the ability of defenders to carry out their work. In some cases, these limitations can threaten the very existence of organizations. Governments should allow access by human rights defenders, in particular non-governmental organizations, to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments.

71. Many countries have put in place legislation that significantly restricts the ability of human rights organizations to access funding, including restrictions on the origin of the funds and the requirement for prior State authorization for non-governmental organizations to receive funds from foreign donors. Some Governments have introduced a complete prohibition on certain types of funding, for example funding coming from United Nations agencies or other bilateral donors. In other instances, organizations working in particular fields — such as governance issues — are prohibited from receiving foreign funding.

72. Governments also place restrictions on how funds can be used and make use of tax laws and regulations to unduly hinder the work of human rights organizations. In particular, non-governmental organizations that are critical of their Governments often face extensive tax scrutiny and abusive use of fiscal procedures by the relevant authorities.

73. In addition to restrictive legislation and practices, the political environment in a given country can undermine access to funding, in particular for women's groups. Women's groups have indicated that patriarchal societies, sexism and authoritarian regimes are some of the most common structural challenges to accessing funding used to support their work.[16]

XI. Permissible derogations and the right to defend human rights

74. Article 4 (1) of the International Covenant on Civil and Political Rights states: "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

75. Two fundamental conditions must be met before a State invokes article 4 of the Covenant: the situation must amount to a public emergency that threatens the life of the nation, and the State must have officially proclaimed a state of emergency. An additional fundamental requirement is that such measures must be limited to the extent strictly required by the exigencies of the situation. This relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation adopted because of the emergency. Further, article 4 (1) requires that no measure derogating from the provisions of the Covenant can be inconsistent with the State's other obligations under international law, particularly the rules of international humanitarian law, and that States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law.[17]

76. The significance of the Declaration on Human Rights Defenders lies in its provision of legitimacy and protection to certain activities that protect and promote universally recognized human rights and fundamental freedoms. The central focus of the Declaration is not the recognition of these rights, but their reiteration and the protection of activities for their promotion. The Declaration extends protection to persons only to the extent of their engagement in these activities. These are important distinctions to take into account when considering any arguments regarding derogations, limitations and restrictions on rights in the emergency or security context. Even if some rights or freedoms are restricted in a situation of

[16] FundHer Brief 2008, "Money watch for women's rights movements and organizations", p. 17 (Association for Women's Rights in Development, 2008).

[17] Human Rights Committee, general comment No. 29 concerning article 4 of the International Covenant on Civil and Political Rights (derogations during a state of emergency).

emergency, or under security legislation, or because of any other requirements, any activity relating to the monitoring of these rights can be neither restricted nor suspended.

77. In this context, derogations from and exceptions to applicable human rights standards, including the Declaration, should be required to meet a higher standard when they are applied to human rights defenders. At times of great risk to human rights, it is essential that there is some form of independent monitoring and accounting of these rights. It would be contrary to the spirit of international human rights standards to argue that at these moments of greater risk the right to defend human rights can be legally silenced.

XII. Conclusions and recommendations

78. **The Special Rapporteur remains concerned that more than a decade after the adoption of the Declaration on Human Rights Defenders, although some progress has been made, many countries continue to pass laws and regulations that restrict the space for human rights activities and that are incompatible with international standards and with the Declaration in particular. Even where efforts are made to adopt laws that are in line with international standards, their ineffective implementation often remains a problem.**

79. **The Declaration is an instrument that is not sufficiently known, either to Governments or to human rights defenders, and more needs to be done. The Special Rapporteur hopes that, by raising awareness about the Declaration, the present report will contribute to the development of a safer and more conducive environment for defenders to be able to carry out their legitimate work.**

80. **After an analysis of the rights provided for in the Declaration, the necessary aspects to ensure their implementation and the main challenges faced by human rights defenders, the Special Rapporteur would like to set forth the following recommendations:**

Right to be protected

81. **States should refrain from stigmatizing the work of human rights defenders and should recognize the role they play, including women defenders and those working on women's rights or gender issues, as well as the legitimacy of their activities in public statements. Such recognition is a first step for preventing or reducing threats and risks against them.**

82. **States should also ensure that violations against defenders, including women defenders and those working on women's rights or gender issues, committed by State and non-State agents are promptly and impartially investigated and that those responsible are adequately punished.**

83. **States should adopt national laws on the protection of defenders, with a specific reference to the work of women human rights defenders. These laws should be developed in consultation with civil society and with technical advice from relevant international agencies.**

84. **States should refer to the minimum guidelines concerning protection programmes for human rights defenders that the Special Rapporteur issued in 2010 (A/HRC/13/22, para. 113).**

85. **Non-State actors and private entities should abide by the Declaration on Human Rights Defenders and refrain from endangering the safety of defenders and obstructing their work. In addition, national and transnational corporations should develop human rights policies in cooperation with defenders, including monitoring and accountability mechanisms related to violations of the rights of defenders.**

86. **National human rights institutions are encouraged to prioritize the protection of defenders in their agenda and establish focal points for defenders. These institutions should investigate complaints made by defenders and disseminate the Declaration.**

87. **The Office of the United Nations High Commissioner for Human Rights is encouraged to develop a comprehensive strategy to protect defenders, including against threats and reprisals by non-State actors.**

Right to freedom of assembly

88. **States should favour regimes of notification rather than authorization of assemblies and, when authorization is required, States should make sure that it is provided in accordance with the principle of non-discrimination. In this connection, States must ensure that there are satisfactory review procedures for complaints of restrictions being imposed on assemblies.**

89. **States should ensure that law enforcement officials are trained in international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and other relevant treaties, declarations and guidelines.**

90. **States should enforce a code of conduct for law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework contains effective provisions for the oversight and accountability of officials, especially with regard to their responses to public protest actions.**

91. **All allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials.**

92. **States must take the necessary steps to guarantee the effective exercise of the right to freedom of assembly for all individuals without discrimination of any kind. In many countries, women defenders often face more risks when participating in collective public action because of perceptions of the traditional role of women in some societies. Those working on women's rights and gender issues also face more risks.**

93. **States should review their legal framework to ensure that national legislation is in conformity with the Declaration and other international**

commitments and international standards relating to the right to freedom of assembly in accordance with article 2 (2) of the Declaration.

Right to freedom of association

94. **States should take the necessary steps to guarantee the effective exercise of the right to freedom of association for all individuals without discrimination of any kind.**

95. **States should not interfere with the internal management or activities of non-governmental organizations. Domestic laws should avoid containing lists of permitted or prohibited activities for civil society organizations and non-governmental organizations should be able to carry out activities in defence of human rights.**

96. **States must put in place a single, publicly accessible register for civil society organizations. Registration bodies should be independent from the Government and should include representatives of civil society.**

97. **Regarding registration laws and procedures, the Special Rapporteur recommends that:**

(a) **Non-governmental organizations be allowed to carry out collective activities without having to register and that States do not impose criminal sanctions for participating in unregistered entities;**

(b) **Laws governing the creation, registration and functioning of civil society organizations be written and establish clear, consistent and simple criteria to be met in order to register. Non-governmental organizations that meet the prescribed criteria should be immediately able to register as legal entities;**

(c) **States ensure that existing laws and regulations are applied in an independent and transparent manner. Laws should be clear about the status of organizations in the period between the request for registration and the final decision. Pending such a final decision, human rights organizations should be free to carry out their activities;**

(d) **In the event of the adoption of a new law concerning civil society organizations, all previously registered non-governmental organizations be considered as continuing to operate legally and be provided with fast track procedures to update their registration. Unless a new law is adopted, existing laws governing the registration of civil society organizations should not require that organizations re-register periodically;**

(e) **The registration process be prompt, accessible and inexpensive. States should not impose costs related to the registration process that make it difficult for non-governmental organizations to maintain their registration, nor should they place other unsustainable burdens upon them;**

(f) **States guarantee the right to appeal against any denial of registration. States should also ensure an effective and prompt remedy against any rejection of application, as well as an independent judicial review of the decisions of the registration authority.**

Right to access and communicate with international bodies

98. **States should refrain from all acts of intimidation or reprisal against defenders who have sought to cooperate or have cooperated with United Nations human rights bodies, those who have availed themselves of procedures established by the United Nations, those who have provided legal assistance to victims, those who have submitted communications under procedures established by human rights instruments, and those who are relatives of victims of human rights violations.**

99. **States must protect individuals and members of groups who wish to cooperate with the United Nations, its representatives and mechanisms. States also have a duty to end impunity for perpetrators of violence against individuals who have sought to cooperate with the United Nations and to provide remedies for victims.**

100. **States should refrain from imposing travel restrictions and guarantee defenders access to United Nations bodies and to have the possibility to present oral and written reports and to have those reports given due consideration.**

Right to freedom of opinion and expression

101. **States should take all the necessary steps to ensure the effective exercise of the right to freedom of opinion and expression for all individuals and social sectors, without discrimination of any kind.**[18]

102. **States should ensure that security legislation is not applied against human rights defenders as a means to prevent their human rights work. States must guarantee the possibility for human rights defenders to effectively monitor the application of security legislation. In the context of the arrest and detention of a person under security legislation, defenders should, at a minimum, have regular access to the detainee and to basic information on the substance of the charges on which the detainee is held.**

103. **States must ensure that laws and policies reflect the right of defenders to access information and places of alleged violations and that the relevant authorities are trained to give effect to this right.**

104. **States should also ensure that information held by non-State actors — in particular private companies — that is linked to public interest is made available to the public. States should establish an effective and independent mechanism for this purpose.**

105. **States should refrain from criminalizing, limiting or censoring the exercise of freedom of expression. Except for the permissible and legitimate restrictions established in international human rights law, any measure of this kind should be abolished.**[19]

106. **Defamation and similar offences should be dealt with under civil law and the fines to be paid as compensation should be sufficient to allow for the**

[18] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/14/23, para. 119).

[19] Ibid., para. 120.

continuation of professional activities. Prison sentences should be excluded for offences regarding the reputation of others such as libel and defamation.[20]

107. **States must abstain from introducing new legislation with the same aim as defamation laws under different legal terminology such as disinformation and dissemination of false information. Criticism of the nation, its symbols, the Government, its members and their action should never be seen as an offence.**[21]

Right to protest

108. **States should enforce a code of conduct on law enforcement officials, particularly with regard to crowd control and the use of force, and ensure that the legal framework provides for the accountability of officials concerning their responses to public protests.**

109. **States should take all necessary measures to protect defenders during protests, refrain from the use of excessive force against protesters and adhere to international human rights norms when arresting persons in the context of peaceful demonstrations.**

110. **States must ensure that anti-terrorism legislation and measures are not applied against human rights defenders to hamper their human rights work.**

111. **States are encouraged to take the following measures to address the protection needs of the following groups of defenders:**

(a) Women defenders:

(i) Investigate and prosecute cases of gender-based violence against women defenders during demonstrations;

(ii) Train and instruct law enforcement officials on protection measures to be taken with regard to children taking part in demonstrations with their mothers;

(b) Defenders working on lesbian, gay, bisexual and transgender rights:

(i) Hold accountable authorities taking unlawful decisions banning demonstrations;

(ii) Ensure the protection of participants in gay pride parades before, during and after marches from violence by counter-protestors;

(iii) Train law enforcement officials on appropriate conduct, particularly in relation to the implementation of the non-discrimination principle and respect for diversity;

(c) Student activists:

Take steps to create a conducive environment to allow children and young adults to associate and express views on matters affecting them as well as on broader human rights issues;

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[20] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/4/27, para. 81).

[21] Ibid., para. 82.

(d) Trade unionists:

(i) Acknowledge trade unionists as human rights defenders entitled to the rights and protection set out in the Declaration on Human Rights Defenders;

(ii) Review restrictive legislation on the right to strike, including provisions with very broad definitions of essential services that restrict or prevent strikes by large sectors of civil servants;

(e) Defenders and journalists monitoring demonstrations:

Allow human rights defenders to perform their monitoring role and grant media access to assemblies to facilitate independent coverage.

Right to develop and discuss new ideas

112. **States should recognize a defender's right to promote and protect new human rights ideas (or ideas that are perceived as new) and to advocate for their acceptance. States should publicly recognize the legitimacy of defenders' activities as a first step to preventing or reducing violations against them.**

113. **States must take necessary measures to create an environment of pluralism, tolerance and respect in which all human rights defenders can carry out their work without risk to their physical and psychological integrity or to any form of restriction, harassment, intimidation or fear of persecution.**

114. **States should take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes about femininity, sexual orientation and the role and status of women in society.**

Right to effective remedy

115. **States should ensure prompt and independent investigations of all violations against defenders, the prosecution of alleged perpetrators and the imposition of adequate penalties. States should also ensure that victims have access to justice and effective remedies, including appropriate compensation.**

116. **States should ensure accountability of those who have committed human rights violations, especially against human rights defenders, by means of appropriate disciplinary, civil and criminal proceedings. The application of legal penalties for false prosecution of defenders should be considered.**

117. **States must ensure that public officials and law enforcement officers who are responsible for the prevention, investigation and prosecution of violations against defenders receive adequate training on the Declaration and on the specific protection needs of defenders.**

118. **States must respond to communications sent pursuant to the mandate on human rights defenders in a timely and comprehensive manner. A good practice for replies is to provide information on the measures taken to redress the individual situation, as well as on the initiatives taken to prevent the recurrence of similar situations.**

Right to access to funding

119. **States should ensure and facilitate by law access to funds, including from foreign sources, for the purpose of defending human rights.**

120. **States should refrain from restricting the use of funds, providing they comply with the purposes expressly established in the Declaration of promoting and protecting human rights and fundamental freedoms through peaceful means. States should not require prior governmental authorization to apply for or receive funding from abroad.**

121. **States must allow access by non-governmental organizations to foreign funding and restrict such access only in the interest of transparency and in compliance with generally applicable foreign exchange and customs laws. States should therefore review existing laws to facilitate access to funding.**

122. **States must allow non-governmental organizations to engage in all legally acceptable fund-raising activities under the same regulations that apply to other non-profit organizations in general.**

123. **States should prohibit extensive tax scrutiny and abusive use of fiscal procedures by the relevant authorities.**

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in resolution 65/221, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law, including in a number of specific areas. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the Counter-Terrorism Implementation Task Force, its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and its Executive Directorate, the Human Rights Council with its various special procedures mandates and other mechanisms, the human rights treaty bodies, and the Office of the United Nations High Commissioner for Human Rights. It reports on the consideration by the United Nations human rights system of issues relating to countering terrorism, including compliance of legislation, policies and practices for countering terrorism with international human rights law.

* A/66/150.

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Contents

		Page
I.	Introduction	3
II.	Recent developments in the United Nations in the area of human rights and counter-terrorism	4
	A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force	4
	B. Counter-Terrorism Committee/Counter-Terrorism Committee Executive Directorate	6
	C. Human Rights Council	7
	D. Human rights treaty bodies	14
III.	Activities of the United Nations High Commissioner for Human Rights and of the Office of the United Nations High Commissioner for Human Rights	15
IV.	Conclusions	17

I. Introduction

1. In its resolution 65/221, the General Assembly, inter alia, (a) expressed serious concern at the occurrence of violations of human rights and fundamental freedoms, as well as international refugee and humanitarian law, committed in the context of countering terrorism; (b) urged States countering terrorism to fully comply with their obligations under international law, including with regard to the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment; ensure that all persons deprived of liberty benefit from the guarantees to which they are entitled under international law, including the review of the detention and other fundamental judicial guarantees; ensure that no form of deprivation of liberty places a detained person outside the protection of the law; ensure due process obligations and the right to a fair trial; safeguard the right to privacy; protect all human rights, including economic, social and cultural rights; respect non-refoulement obligations; ensure legality in the criminalization of acts of terrorism; and ensure the right to an effective remedy; (c) recognized the need to continue ensuring that fair and clear procedures under the United Nations terrorism-related sanctions regime are strengthened to enhance their efficiency and transparency; (d) urged States to ensure the rule of law and to include adequate human rights guarantees in their national listing procedures; (e) requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to contribute to the work of the Counter-Terrorism Implementation Task Force, including by raising awareness of the need to protect human rights and the rule of law while countering terrorism; (f) encouraged the Security Council and its Counter-Terrorism Committee to strengthen dialogue with relevant human rights bodies, in particular with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council and relevant treaty bodies; and (g) called upon United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism.

2. I was requested to submit a report on the implementation of resolution 65/221 to the General Assembly at its sixty-sixth session. The present report also responds to the request of the former Commission on Human Rights for the High Commissioner to report to the General Assembly on the implementation of Commission resolution 2005/80. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including through the activities of the Counter-Terrorism Implementation Task Force, its Working Group on Protecting Human Rights while Countering Terrorism, the Counter-Terrorism Committee and its Executive Directorate, the Human Rights Council with its various special procedures mandates and other mechanisms, the human rights treaty bodies, and OHCHR.

II. Recent developments in the United Nations in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

3. The Counter-Terrorism Implementation Task Force continues to play a crucial role in facilitating and promoting coordination and coherence in the implementation of the Global Strategy at the national, regional and global levels. In this connection, the Working Group on Protecting Human Rights while Countering Terrorism led by OHCHR[1] continues to assist States in implementing the human rights aspects of the United Nations Global Counter-Terrorism Strategy,[2] in particular those contained in its fourth pillar, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism".

4. In the Global Counter-Terrorism Strategy and Plan of Action, States resolved to "make every effort to develop and maintain an effective and rule of law-based national criminal justice system that can ensure, in accordance with (...) obligations under international law, that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in support of terrorist acts is brought to justice, on the basis of the principle to extradite or prosecute, with due respect for human rights and fundamental freedoms [...]."[2] In this context, the Working Group on Protecting Human Rights while Countering Terrorism is organizing a series of five expert regional symposia, with State participation, on the protection of human rights aimed at securing the fundamental principles of a fair trial in the context of countering terrorism, with particular reference to international standards, jurisprudence and practice. Through regional and international expertise, and a regional focus, the five symposia aim to examine specific thematic issues, draw conclusions and make recommendations based on international standards.

5. All expert symposia are being held at the regional level on a rotating basis to facilitate meaningful participation of regional and national experts and practitioners who work specifically on the issues examined and can provide key first-hand practical knowledge of the challenges and complexities encountered, as well as good practices to be recommended. The symposia focus on various aspects of the protection of the right to a fair trial in the context of countering terrorism, including issues linked to the universality and non-derogable aspects of the right to a fair trial; the use of ordinary criminal law to try persons suspected of terrorist acts; respect for the principle of legality; the relationship between intelligence and law enforcement agencies; the rights of persons detained and/or persons tried for acts of terrorism; the question of independence and impartiality of courts in the context of trials related to offences of terrorism; the issue of proscription of organisations; and targeted sanctions at the national level.

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[1] Other members include the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the United Nations Office on Drugs and Crime, the Counter-Terrorism Committee Executive Directorate, the Office of Legal Affairs of the United Nations Secretariat, the United Nations Interregional Crime and Justice Research Institute, the World Bank, the International Maritime Organization and the 1267 Monitoring Committee. The Office for the Coordination of Humanitarian Affairs and the International Criminal Police Organization (INTERPOL) participate as observers.

[2] General Assembly resolution 60/288.

6. The first regional expert symposium took place in Bangkok, on 17 and 18 February 2011, and was attended by 60 participants from the South-East Asia region (Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste and Viet Nam), including judges, prosecutors and Ministry of Justice officials, defence lawyers, international law experts, civil society representatives, and members of the Counter-Terrorism Implementation Task Force. Participants assessed the challenges to implementing the right to a fair trial in the context of counter-terrorism as set out in international law, identified key rights to protecting the right to a fair trial in countering terrorism and shared good practices. As a result of this event, an initial set of observations and good practices will be issued by the Working Group to offer guidance to Member States.

7. During the reporting period, the Working Group on Protecting Human Rights while Countering Terrorism issued two basic human rights reference guides on the stopping and searching of persons in the context of countering terrorism, and on security infrastructure.[3] Three more are being developed on detention in the context of counter-terrorism; the principle of legality in national counter-terrorism legislation; and the proscription of organizations. These guides aim to provide guidance to State authorities, national and international non-governmental organizations, legal practitioners, and United Nations agencies, as well as individuals, on how human rights-compliant measures may be adopted in a number of counter-terrorism areas.

8. The Working Group has also continued to engage with civil society on issues related to the implementation of the human rights aspects of the Global Strategy. Given that the activities of civil society are vital to increasing awareness about the threats of terrorism, more effectively tackling these threats and for ensuring respect for human rights and the rule of law, the Task Force's engagement with civil society, non-governmental organizations and human rights defenders is crucial to informing the assistance provided by the Task Force and its working groups.

9. Other working groups of the Counter-Terrorism Implementation Task Force[4] also continue to address human rights issues in their work, including the Working Group on Supporting and Highlighting Victims of Terrorism, the newly established Working Group on Border Management Relating to Counter-Terrorism, the Working Group on Countering the Use of the Internet for Terrorism Purposes, and the integrated assistance for countering terrorism initiative. The Working Group on Preventing and Resolving Conflicts has organized a series of meetings on the implementation of the Global Counter-Terrorism Strategy in the Central Asia region. The first of these meetings took place in December 2010 in Bratislava, and focused on pillars I ("Measures to address the conditions conducive to the spread of terrorism") and IV ("Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism") of the Global Counter-Terrorism Strategy. It included working sessions on the topic of ensuring respect for human rights and the rule of law, including good governance, to address conditions conducive to the spread of terrorism. A second meeting took place in

[3] See A/65/224, paras. 5-6.

[4] A list of all Working Groups of the Counter-Terrorism Implementation Task Force is available at: http://www.un.org/terrorism/workinggroups.shtml.

Dushanbe, in March 2011, and was dedicated to pillar II ("Preventing and combating terrorism") of the Strategy.

B. Counter-Terrorism Committee/Counter-Terrorism Committee Executive Directorate

10. The Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate continue to take relevant human rights concerns into account in their work programmes focused on the implementation of Security Council resolutions 1373 (2001) and 1624 (2005). Security Council resolution 1963 (2010), adopted on 20 December 2010, further extended the mandate of the Counter-Terrorism Committee Executive Directorate until 31 December 2013. The resolution also reminded States that effective counter-terrorism measures and respect for human rights are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort. It also noted the importance of respect for the rule of law so as to effectively combat terrorism. The resolution encouraged the Counter-Terrorism Committee Executive Directorate to further develop its activities in this area, to ensure that all human rights issues relevant to the implementation of resolutions 1373 (2001) and 1624 (2005) are addressed consistently and even-handedly in all its activities. In this connection, the Counter-Terrorism Committee Executive Directorate also continued its active participation in the work of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism.

11. In line with the mandate provided by the General Assembly in its resolution 65/221, the Counter-Terrorism Committee Executive Directorate continued to liaise with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and other human rights entities. The Executive Directorate also continued its dialogue on relevant human rights issues with regional and subregional organizations. From 19 to 21 April 2011, the Council of Europe hosted a meeting of the Counter-Terrorism Committee on the theme of "Prevention of Terrorism", to which international, regional and subregional organizations were invited. Both OHCHR and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism participated.

12. In November 2010, the Counter-Terrorism Committee Executive Directorate organized a regional workshop for representatives of police forces, prosecutors and counter-terrorism focal points of South Asian countries at the Jakarta Centre for Law Enforcement Cooperation, in Indonesia. The event focused on the effective use of community policing techniques in countering terrorism and the latest developments in mobile-phone technology as it pertains to counter-terrorism. The workshop also addressed in detail the role of counter-terrorism coordinators and focal points in enhancing counter-terrorism cooperation in national and international contexts. OHCHR supported the event by facilitating the participation of a human rights expert.

13. Furthermore, in May 2011, the Counter-Terrorism Committee Executive Directorate organized a regional workshop for senior law enforcement and prosecution officials and judges in South Asia, in Thimphu, Bhutan. During the workshop, participants discussed the role of the police and prosecution services in

combating terrorism and the challenges faced by those services in leading effective investigations and prosecutions. The workshop also provided an opportunity to raise the awareness of police and prosecution services regarding the latest available investigation technologies and techniques, and to share relevant experience and good practice. A representative of OHCHR contributed to the event, drawing the participants' attention to applicable international human rights standards with regard to investigations and prosecutions.

C. Human Rights Council

14. At its fifteenth session, the Human Rights Council decided, in its resolution 15/15, to extend the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for a period of three years, and requested the Special Rapporteur, among other tasks, to identify, exchange and promote best practices on measures to counter terrorism that respect human rights and fundamental freedoms.[5]

15. At the same session, the Human Rights Council, in resolution 15/18 on the issue of arbitrary detention, encouraged all States to ensure that the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before a court, so that it may decide without delay on the lawfulness of detention and order release if the detention is not lawful, is equally respected in cases of administrative detention, including those under public security legislation. Furthermore, the Human Rights Council adopted resolution 15/28 on assistance to Somalia in the field of human rights and urged the Transitional Federal Government, Member States, stakeholders and the entire international community to continue to isolate and take all required measures against individuals and entities whose actions threaten the peace, security or stability of Somalia and of the region, including those engaged in terrorist acts, while ensuring that any measure taken to counter terrorism complies with international law.

16. On 11 March 2011, at its sixteenth session, the Human Rights Council held a panel discussion[6] pursuant to its decision 15/116 on the issue of human rights in the context of action taken to address terrorist hostage-taking, with a special focus on the primary responsibility of States to promote and protect human rights for all in their jurisdiction, the strengthening of international cooperation to prevent and combat terrorism and the protection of the rights of all victims of terrorism involved. The panel discussion was intended to increase awareness and understanding of the human rights aspects of hostage-taking when committed in the context of terrorist activities.

17. The panel discussion was moderated by Sihasak Phuangketkeow (Thailand), President of the Human Rights Council, and opened by the Deputy High Commissioner for Human Rights, Kyung-wha Kang. The panellists were Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Kamel Rezzag-Bara, Adviser of the President of the People's Democratic Republic of Algeria; Commissioner Cecilia R.V. Quisumbing, National Human Rights Commission of the Philippines;

[5] See paras. 22-25 of the present report.

[6] A summary of the panel discussion is available in A/HRC/18/29.

Soumeylou Maiga, President of the Sahel Observatory of Geostrategy and Security of Mali; and Federico Andreu-Guzmán, Deputy Director of the Litigation and Legal Protection Section, Colombian Commission of Jurists.

18. Also at its sixteenth session, the Human Rights Council, in its resolution 16/23 of 25 March 2011, condemned, in particular, any action or attempt by States or public officials to legalize, authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urged States to ensure accountability for all such acts. It further reminded States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urged all States to respect the safeguards concerning the liberty, the security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.

19. On 1 June 2011, during its seventeenth session, the Human Rights Council held a panel discussion on the issue of human rights of victims of terrorism, taking into account, inter alia, the recommendations of the Symposium on Supporting Victims of Terrorism, convened by the Secretary-General and held on 9 September 2008, pursuant to Council decision 16/116. The objective of the panel discussion was to enhance understanding of the issue of human rights of victims of terrorism, exchange information on relevant efforts undertaken at international, regional and national levels, and share good practices with a view to increasing the capacity of States to respond to the needs for the protection of the rights of victims of terrorism and their families, while taking into account their international human rights obligations.

20. The panel discussion was moderated by Mr. Phuangketkeow (Thailand), President of the Human Rights Council, and opened by Navanethem Pillay, United Nations High Commissioner for Human Rights. The following panellists made presentations: Anne Wu, Political Affairs Officer, Counter-Terrorism Implementation Task Force Office, Department of Political Affairs; Martin Scheinin, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Maite Pagazaurtundua, Victims of Terrorism Foundation of Spain; Rianne M. Letschert, Professor of International Law and Victimology and Deputy Director of the International Victimology Institute, Tilburg, University of Tilburg, the Netherlands; Mauro Miedico, Coordinator, Specialized Terrorism Prevention Unit, Terrorism Prevention Branch, United Nations Office on Drugs and Crime; and Yakin Erturk, Member of the Committee on the Prevention of Torture of the Council of Europe and former Special Rapporteur on violence against women. As requested by the Human Rights Council in its decision 16/116, OHCHR will prepare a summary of the panel discussion to be submitted to the nineteenth session of the Human Rights Council.

Universal periodic review

21. The Human Rights Council also considered the issue of the protection of human rights and fundamental freedoms while countering terrorism under the universal periodic review. Some of the most prevalent recommendations of the Human Rights Council called for the alignment of domestic counter-terrorism laws

with international human rights standards and obligations,[7] pointing particularly to the need for a review of the legislative framework to combat terrorism.[8] States were also recommended to halt serious violations of human rights and humanitarian law committed under the pretext of combating terrorism.[9] Concerns were raised about the prosecution of those arrested for terrorist crimes in exceptional tribunals or jurisdictions, highlighting that they must be brought before legally-established judicial bodies, with the protection of due process.[10] Furthermore, Member States were encouraged to investigate allegations of torture in the context of counter-terrorism measures, to give publicity to the findings, to bring perpetrators to justice and to provide reparation to the victims.[11] In addition, the Human Rights Council called for the enactment of legislation, consistent with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encompassing acts described as "enhanced interrogation techniques".[12] It also recommended an open and transparent assessment of the consequences of flights conducted over the respective State's national territory and landings that took place in the context of the Central Intelligence Agency extradition programme.[13] Moreover, capital punishment sentences for terrorism convictions were raised as a concern.[14] Other recommendations highlighted the need to avoid religious and racial profiling, while defending against terrorism, through the promulgation of prohibitive legislation.[15] In this connection, it was also suggested to "smarten" security checks so as to avoid discrimination.[16] Furthermore, it was proposed that States organize human rights-based training sessions to educate relevant authorities, in order to improve counter-terrorism practices.[17] Finally, Member States were called upon to respond and act on recommendations made by the Special Rapporteur for the promotion and protection of human rights and fundamental freedoms while countering terrorism.[18]

Special procedures

22. In his report to the sixteenth session of the Human Rights Council (A/HRC/16/51), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism presented a compilation of 10 best practices in countering terrorism in the form of legislative models. The compilation is the outcome of analysis undertaken by the Special Rapporteur on the basis of his work conducted over six years and involving various forms of interaction with multiple stakeholders, in particular written submissions from Governments (see A/HRC/16/51/Add.4). The compilation draws upon international treaties, resolutions of international organizations and the jurisprudence of

[7] A/HRC/16/11 and Add.1, para. 92.58; A/HRC/17/10 and Add.1, para. 86.139.
[8] A/HRC/17/10 and Add.1, paras 86.137, 86.138; see also A/HRC/18/4, para. 106.133, regarding an evidence-based evaluation of the anti-terrorism legislation.
[9] A/HRC/16/11 and Add.1, para. 92.217.
[10] Ibid., para. 92.218.
[11] A/HRC/17/10 and Add.1, para. 86.136.
[12] A/HRC/16/11 and Add.1, para. 92.66.
[13] A/HRC/18/4, para. 106.132.
[14] A/HRC/16/3 and Add.1, paras. 78.6, 78.9, 78.19.
[15] A/HRC/16/11 and Add.1, para. 92.219.
[16] Ibid., para. 92.220.
[17] A/HRC/17/7 and Add.1, para. 89.98.
[18] A/HRC/16/11 and Add.1, para. 92.90.

international and regional courts. In his report, the Special Rapporteur concludes that, beyond such models, best practices could also be identified in other forms, above all in the adoption of national counter-terrorism strategies that need to go beyond good laws and require a comprehensive approach, rooted in human rights and addressing also conditions conducive to the spread of terrorism, in line with the Global Counter-Terrorism Strategy. The model provisions refer to: consistency of counter-terrorism law with human rights, humanitarian law and refugee law; consistency of counter-terrorism practices with human rights, humanitarian law and refugee law; the principles of normalcy and specificity; review of the operation of counter-terrorism law and practice; effective remedies for violations of human rights; reparations and assistance to victims; the definition of terrorism; a model offence of incitement to terrorism; core elements of best practice in the listing of terrorist entities; and core elements of best practice in arrest and interrogation of terrorist suspects.

23. At the invitation of the Government, the Special Rapporteur conducted a visit to Tunisia from 22 to 26 January 2010 (see A/HRC/16/51/Add.2). The Transitional Government invited the Special Rapporteur for a second visit that took place from 22 to 26 May 2011. In his press statement of 26 May at the conclusion of his follow-up mission, the Special Rapporteur stressed the need to carry out necessary reforms within the counter-terrorism framework in compliance with international human rights law. He called for measures to combat impunity and secure accountability for crimes and human rights violations committed in the name of counter-terrorism. These measures include the continuation of ex officio investigations into allegations of torture and illegal detention, which were often conducted under the pretext of the fight against terrorism, and holding those responsible accountable to help rebuild trust between the population and the security forces in the country. The Special Rapporteur stated that the abusive anti-terrorism law of 2003 has largely not been used since the events of 14 January 2011. According to the Special Rapporteur, the Transitional Government had acknowledged, by adopting an amnesty law covering those who were convicted or held under the anti-terrorism law, that this law did not provide more security to the Tunisian people, but rather was used as a tool of oppression against any form of political or other dissent. The Special Rapporteur offered the assistance of his mandate to replace the 2003 law with a proper legislative framework that regulates Tunisia's anti-terrorism efforts in line with international conventions and protocols on countering terrorism, while fully respecting human rights and fundamental freedoms. Further referring to his previous report (see A/HRC/16/51/Add.2), in which he had expressed grave concern about the activities of various entities of the security apparatus and the secrecy and impunity in which they operated, the Special Rapporteur commended the abolishment by the Transitional Government of the Directorate for State Security as an entity, allegedly responsible for activities of torture and arbitrary and even secret detention, and of the "political police", which had not existed in the law, but was used as a term to describe those elements in the security organs related to the Ministry of the Interior that had been responsible for cracking down on political and human rights activists and other dissent.

24. At the invitation of the Government, the Special Rapporteur conducted a visit to Peru from 1 to 8 September 2010. In his report (A/HRC/16/51/Add.3 and Corr.1), the Special Rapporteur examined measures taken by Peru to support victims of terrorist crimes and human rights violations committed by State security forces

during the internal armed conflict between 1980 and 2000. He also analysed the legislative framework for countering terrorism and its application and implementation in practice. The Special Rapporteur concluded that Peru provides important lessons with regard to the provision of justice and compensation for the suffering caused by the internal armed conflict and that the establishment of the Truth and Reconciliation Commission can be considered as a best practice. The criminal trial and sentencing of the former President of Peru and his aides, and the numerous retrials of terrorism convicts previously convicted in unfair trials, constitute significant steps forward in the State's compliance with its obligations under international human rights standards. The Special Rapporteur was concerned, however, about the broad definition of terrorism contained in criminal legislation, the slow progress made in the implementation of the reparations scheme, and the tendency to associate human rights defenders and social protest movements with terrorism. He emphasized that resorting to states of emergency and the deployment of military forces not only as a counter-terrorism measure, but also in situations of mass demonstrations, poses a risk of militarization of conflicts that should not be resolved by the armed forces. The Special Rapporteur welcomed the decision of Congress to repeal Legislative Decree No. 1097 adopted by the executive branch pursuant to delegated legislative authority, as the Decree could have allowed for the discontinuation (*sobreseimiento*) of criminal proceedings for human rights violations committed during the internal armed conflict, and appeared to have subjected crimes covered by the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity to a statute of limitations.

25. The report of the Special Rapporteur to the General Assembly at its sixty-fifth session (A/65/258) addressed the question of compliance with human rights standards by the United Nations when countering terrorism, taking stock of and assessing the role and contributions of, inter alia, the General Assembly, the Counter-Terrorism Implementation Task Force, the Human Rights Council, the Security Council and its subsidiary bodies, and United Nations field presences in the promotion and protection of human rights in the context of their counter-terrorism activities. The main recommendation contained in the report was that the Security Council should seize the opportunity of the approaching tenth anniversary of its resolution 1373 (2001) to replace resolutions 1373 (2001), 1624 (2005) and 1267 (1999) (as amended) with a single resolution, not adopted under Chapter VII of the Charter of the United Nations, in order to systematize States' counter-terrorism measures and reporting duties of States under a single framework. This proposal was motivated by the assessment of the Special Rapporteur that Chapter VII of the Charter does not provide the proper legal basis for maintaining the current framework of mandatory and permanent Security Council resolutions of a quasi-legislative or quasi-judicial nature. The report also addressed ways and means of improving human rights accountability of the United Nations for its field operations, including in the context of countering terrorism, as well as the contributions of various actors towards the implementation of the 2006 United Nations Global Counter-Terrorism Strategy.

26. In its report to the Human Rights Council (A/HRC/16/47 and Add. 1-3 and Corr.1), the Working Group on Arbitrary Detention stressed the far-reaching impact of the joint study on global practices in relation to secret detention in the context of countering terrorism (see A/HRC/13/42 and A/65/224, para. 13), particularly in relation to its mandate and instances of arbitrary deprivation of liberty. It noted with

concern that cases of secret detention are regularly accompanied by the absence of legal guarantees, habeas corpus and fair trial. The Working Group has reiterated the need for the application of a strict test and close scrutiny when considering cases containing general and vague references to terrorism by Governments as a justification for restricting human rights. The Working Group made reference to three Opinions adopted under its individual complaints procedure during the period under consideration that directly concerned cases of persons detained on terrorism-related charges, holding the deprivation of liberty to be arbitrary in all of them (Opinion No. 22/2010, see A/HRC/16/47/Add.1, and Opinions No. 24/2010 and 32/2010, see A/HRC/16/47, para. 9, Table 1).

27. The then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in his report to the General Assembly (A/65/273), expressed concern that in order to combat increasing levels of crime, terrorism and other forms of organized crime effectively, Governments in too many countries seemed willing to restrict certain human rights by granting their law enforcement and intelligence agencies and security forces very extensive powers. He argued that this leads to an environment conducive to undermining the absolute prohibition of torture. The brutalization of many societies has reached a level where torture is simply regarded by Governments and the population at large as the "lesser evil". The Special Rapporteur noted that this trend is alarming. He emphasized that there was a need for a global awareness-raising campaign to change this climate of tolerance towards excessive use of force by law enforcement officials. Governments needed to be reminded that torture is not an effective means of combating crime. On the contrary, it contributed to the further brutalization of societies and the spiral of violence that many societies suffered from. In his first report to the Human Rights Council (A/HRC/16/52), the newly appointed Special Rapporteur indicated his intention to identify and further develop the linkages between forensic and other sciences, not only with a view to eradicating torture and providing corroborating evidence of torture, but also to offer States credible forensic and other scientific alternatives to employ in law enforcement, counter-terrorism and effective criminal prosecution.

28. The former Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the General Assembly (A/65/321, paras. 11-16), addressed the question of targeted killings and accountability, including in the context of countering terrorism. He expressed concern that since the presentation of his report to the Human Rights Council at its fourteenth session on the issue of targeted killing (A/HRC/14/24/Add.6), no concrete information had been provided by Member States in relation to any of the basic questions raised in the Special Rapporteur's report.

29. In his report to the Human Rights Council, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression raised concerns regarding limitations imposed on the right to freedom of expression through the Internet on the grounds of countering terrorism (A/HRC/17/27). He noted that existing criminal laws, or new laws specifically designed to criminalize expression on the Internet, were often justified under the notion of countering terrorism, but "in practice are used to censor content that the Government and other powerful entities do not like or agree with." The Special Rapporteur stressed that the protection of national security or the need to combat terrorism could not be used to justify restricting the right to freedom of expression, unless the Government could

demonstrate that (a) the expression was intended to incite imminent violence; (b) it was likely to incite such violence; and (c) there was a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

30. The Special Rapporteur on the situation of human rights defenders addressed the issue of stigmatization of human rights defenders by non-State actors in her report to the General Assembly (A/65/223). The Special Rapporteur pointed to the fact that in the context of civil conflict paramilitaries often attempted to stigmatize the work of human rights defenders and legitimize campaigns of violence against them by alleging that they were associated with armed groups or "terrorists". She stated that, in such instances, it was vital that Governments publicly reaffirmed the importance of the work carried out by human rights defenders and denounced any attempts at its delegitimization or stigmatization. In her report to the Human Rights Council (A/HRC/16/44, Add. 1-2 and Corr.1), the Special Rapporteur raised the issue of stigmatization and criminalization of the work of women human rights defenders. She stated that, aside from the "political" stigmatization to which both women defenders and their male counterparts are subjected in certain contexts, including accusations of being fronts for guerrilla movements, terrorists, political extremists, separatists, foreign countries or interests, women human rights defenders often faced further stigmatization by virtue of their sex or the gender- or sexuality-based rights they advocated.

31. The Special Rapporteur on freedom of religion or belief, in the report to the General Assembly (A/65/207, para. 39), voiced concerns about reports that Muslims were, in the context of counter-terrorism measures, regularly subjected to screening of their personal data, house searches, interrogation and arrest solely because of their religious affiliation. The Special Rapporteur emphasized that profiling practices based on ethnicity, national origin and/or religion regularly failed to meet the requirement of a proportionate means of countering terrorism and also entailed considerable negative consequences that may render these measures counterproductive in the fight against terrorism.

Open-ended intergovernmental working group to consider the possibility of elaborating an international regulatory framework on the activities of private military and security companies

32. By resolution 15/26 of 1 October 2010, the Human Rights Council established an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, the monitoring and the oversight of the activities of private military and security companies, including their accountability, taking into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Council decided that the open-ended intergovernmental working group would hold a session of five working days a year for a period of two years and present its recommendations at the twenty-first session of the Human Rights Council. Pursuant to the resolution, the first session of the working group took place from 23 to 27 May 2011.

D. Human rights treaty bodies

33. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination continued to examine the compliance of State parties' legislation and practices with their respective human rights treaty obligations in the context of countering terrorism.

34. The issues addressed by the Human Right Committee and the Committee against Torture predominantly concerned overly broad and unclear definitions of terrorism offences in national legislation.[19] Furthermore, the Human Rights Committee expressed concern at State's intentions to adopt anti-terrorism legislation allowing for significant delays before trial, before providing access to a lawyer and for decisions on the extension of detention to be taken, in exceptional circumstances, in the absence of a suspect.[20] In this connection, the Committee recommended that any person arrested or detained on a criminal charge, including persons suspected of security-related offences, had immediate access to a lawyers and immediate access to a judge.[20] It also highlighted the issue of legislation that permitted judges to withhold evidence from the detainee owing to security concerns, and underscored the importance of access to all evidence, including classified evidence, and suggested to possibly introduce a regime of special advocates.[20] Moreover, the Human Rights Committee emphasized its concern regarding the limited organizational and functional independence of State security courts and the power of the executive to refer cases that did not affect State security to these courts.[21]

35. The Committee against Torture expressed deep concern at allegations of routine use of torture employed by police, prison officers, security forces and military personnel, against alleged terrorists.[22] Further, it pointed to credible reports indicating that these acts frequently occurred with the participation, at the instigation, or with the consent of, commanding officers in police stations, detention centres, prisons and military bases and in unofficial or secret places of detention.[22] The Committee therefore urged the relevant State party to take immediate and effective measures to investigate, prosecute and punish all acts of torture.[22] Legislation unduly restricting legal safeguards against torture and ill treatment for persons suspected of, or charged with, a terrorist or related crime, while simultaneously providing the police with broad powers to arrest suspects without a court warrant, has given the Committee against Torture additional cause for concern.[23] Regarding the deprivation of rights for alleged terrorists in detention, the Committee has urged States to allow detainees immediate access to a lawyer, adequate time to prepare for trial, independent medical examination that includes patient–doctor confidentiality, and family notification of detention.[24] The Committee criticized practices of detention and incidents of ill treatment of children in unrecorded adult pre-charge facilities and interrogations without legal assistance

[19] See CCPR/C/HUN/CO/5, para. 9; CCPR/C/ISR/CO/3, para. 13; CCPR/C/POL/CO/6, para. 4; CCPR/C/JOR/CO/4, para. 6; CAT/C/MCO/CO/4-5, para. 14.
[20] See CCPR/C/ISR/CO/3, para. 13.
[21] CCPR/C/JOR/CO/4, para. 12.
[22] CAT/C/ETH/CO/1, para. 10.
[23] Ibid., para. 14.
[24] CAT/C/TUR/CO/3, para. 11.

or the presence of an adult or a legal guardian.[25] The Committee also noted reports about frequent interference by the executive branch with the judicial process, in particular in criminal proceedings, and reported cases of harassment, threats, intimidation, and dismissal of judges who have resisted political pressure and/or, ordered the release of defendants charged with terrorist or State crimes.[26] Furthermore, it expressed concern at the admission of evidence and confessions obtained through torture, and recommended that necessary steps be taken to ensure that, in practice, such confessions and evidence are not admitted in court proceedings, including in cases falling under counter-terrorism regulations.[27]

36. Other issues of concern for treaty bodies included disproportionate use of force when responding to terrorist threats causing collateral deaths;[28] demolition of property and homes of families of terrorist suspects;[29] the abduction of alleged terrorist suspects;[30] the restriction in places of detention of certain privileges relating to group activities for persons accused of, or convicted for, terrorist offences;[31] practices of racial profiling as part of national security measures that may contribute to increased stigmatization of certain groups;[32] the prosecution of children for their association with armed groups under counter-terrorism provisions;[33] and the lack of a strict and narrow definition of conditions for declaring an emergency and limitation to exceptional circumstances.[34] Of particular concern with regard to emergency laws were child-related abuses such as detention for over a year, denial of a lawyer,[35] trials before military courts,[36] and the impact of emergency regulations on the enjoyment of economic, social and cultural rights.[37]

III. Activities of the United Nations High Commissioner for Human Rights and of the Office of the United Nations High Commissioner for Human Rights

37. In carrying out her mandate, the United Nations High Commissioner for Human Rights has continued to examine the question of the protection of human rights and fundamental freedoms while countering terrorism and to make general recommendations about the obligations of States in this regard. In her report to the Council at its sixteenth session (A/HRC/16/50), the High Commissioner expressed her continued deep concern at the erosion of respect for due process, including the right to a fair trial, in the context of counter-terrorism policies and practices. While noting that the newly established de-listing procedures, including the establishment of the Office of the Ombudsman to receive requests from individuals and entities

[25] Ibid., para. 21.
[26] CAT/C/ETH/CO/1, para. 22.
[27] Ibid., para. 31.
[28] CCPR/ISR/CO/3, para. 10.
[29] Ibid., para. 17.
[30] CAT/C/ETH/CO/1, para. 20.
[31] CAT/C/TUR/CO/3, para. 17.
[32] CERD/C/AUS/CO/15-17, para. 12.
[33] CRC/C/OPAC/LKA/CO/1, para. 39.
[34] CRC/C/LKA/CO/3-4, para. 10.
[35] CRC/C/OPAC/LKA/CO, para. 32.
[36] CRC/C/OPAC/EGY/1, para. 30.
[37] E/C.12/LKA/CO/2-4, para. 7.

seeking removal from the Consolidated List, represented an important step towards fair and clear procedures, the High Commissioner underlined the gulf between the 1267 regime and due process-related requirements in international human rights law and stressed that the need for more comprehensive reform remained.[38]

38. The High Commissioner therefore urged the Human Rights Council to continue to explore every avenue possible in order to ensure that sanctions imposed against individuals and entities were accompanied by rigorous procedural safeguards, which guaranteed minimum due process standards, for both listing and de-listing decisions. She further underlined that this should include ensuring full support to the Office of the Ombudsperson, while developing additional mechanisms to enhance due process protections for listing and de-listing procedures. It should also include the establishment of an independent, quasi-judicial procedure for review of listing and de-listing decisions.[39]

39. In the same report, the High Commissioner pointed to practices that impeded the right to a fair trial in the context of counter-terrorism, such as certain uses of intelligence in criminal justice processes.[40] While highlighting that the use of accurate intelligence is indispensable to prevent terrorist acts and bring individuals suspected of terrorist activity to justice, she underscored that the increased reliance on intelligence for countering terrorism and the advent of "intelligence-led law enforcement" in many countries has led to the expansion of intelligence authority, often without adequate consideration for the due process safeguards necessary to protect against abuses. In this connection, the High Commissioner also emphasized the challenges to human rights posed by the increased reliance by States on intelligence, including the abuse of the State secrecy doctrine in the context of legal proceedings, the use in legal proceedings of evidence obtained by illegal means, whether at home or abroad, and the use of secret evidence. In the meantime, she called upon States to ensure that regulatory frameworks are in place to guarantee compliance with international human rights law, both domestically and through intelligence cooperation with other States.

40. In addition to its activities as Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism in relation to pillar IV of the Global Counter-Terrorism Strategy, as reflected in section II.A of the present report, OHCHR has continued to strengthen the incorporation of a human rights approach into the common efforts regarding the other pillars of the Global Counter-Terrorism Strategy. In this connection, OHCHR participated in a symposium entitled "Taking Stock and Defining the Way Forward: Strengthening the Response to Terrorism by Addressing Connections with Related Criminal Activities", organized by the United Nations Office on Drugs and Crime in March 2011 in Vienna, with a presentation on how Member States could be supported, through technical assistance and cooperation, to respond to legitimate national security concerns in full compliance with the rule of law and human rights.

41. The High Commissioner for Human Rights also opened a Human Rights Council panel discussion on the issue of human rights of victims of terrorism that took place in June 2011,[41] while the Deputy High Commissioner delivered opening

[38] See A/HRC/16/50, paras. 16-21.
[39] Ibid., paras. 27 and 44.
[40] Ibid., paras. 33-40.
[41] See also paras. 19-20 of the present report.

remarks for a Council panel on the issue of human rights in the context of action taken to address terrorist hostage-taking that was held in March 2011.[42] In addition, the Deputy High Commissioner opened a side event to the sixteenth session of the Human Rights Council on the topic of human rights of victims of terrorism, in which another OHCHR representative participated as a panellist.

IV. Conclusions

42. **The United Nations High Commissioner for Human Rights, human rights treaty bodies, the Human Rights Council and its various special procedures have continued to express deep concerns with regard to remaining significant inconsistencies between domestic counter-terrorism legal frameworks and practices and international human rights standards, including vague and broad definitions of terrorism, lack of legal safeguards related to due process and fair trial guarantees, and practices of torture and ill-treatment of terrorist suspects. Reiterating my call on Member States to fully implement the Global Strategy on Counter-Terrorism, and to ensure respect for human rights and the rule of law as the fundamental basis of all counter-terrorism measures, I urge all States to ensure that their counter-terrorism measures comply with their obligations under international law.**

43. **Effective criminal justice systems based on respect for human rights and the rule of law, including due process and fair trial guarantees, continue to be the best means for effectively countering terrorism and ensuring accountability. I encourage States to actively participate in the regional expert symposia on the theme "Protection of human rights aimed at securing the fundamental principles of a fair trial in the context of countering terrorism", held under the auspices of the Working Group on Protecting Human Rights while Countering Terrorism, and to make use of the observations and good practices being developed in this process. I also encourage States and other stakeholders to take advantage of the basic human rights reference guides developed by this Working Group.**

44. **I encourage the Counter-Terrorism Implementation Task Force, its Working Groups and entities to continue to incorporate a human rights approach to, and address human rights issues and concerns in, their work, in line with the approach mandated by Member States in the Global Strategy and to ensure that the assistance provided by the Counter-Terrorism Implementation Task Force to respond to terrorism is effective, sustainable and compliant with international human rights law. In this context, the Counter-Terrorism Implementation Task Force should increase its engagement with civil society to inform the assistance provided by the Task Force and its working groups.**

45. **Building on Security Council resolution 1963 (2010), the Counter-Terrorism Committee and the Counter-Terrorism Committee Executive Directorate are encouraged to continue their efforts to place respect for the rule of law and human rights at the core of the fight against terrorism in areas within the scope of their mandates. In this connection, efforts by the Counter-Terrorism Committee and its Executive Directorate to involve the Office of the High Commissioner for Human Rights in their activities are to be commended.**

[42] See also paras. 16-17 of the present report.